ASSESSMENT OF EXISTING EXPORT TRADE BARRIERS FACING KENYAN FRESH VEGETABLES AND FRUITS AND THE RECOMMENDED RESOLUTION FRAMEWORK

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Acronyms & Abbreviations

AFA	Agriculture and Food Authority
AfCFTA	African Continental Free Trade Area
EAC	East African Community
EACCMP	EAC Common Market Protocol
COMESA	Common Market for Eastern and Southern Africa
EPA	Economic Partnership Agreement
EU	European Union
FDI	Foreign Direct Investment
GOK	Government of Kenya
GSP	Generalised System of Preferences
HCD	Horticultural Crops Directorate
HS Codes	Harmonised System Codes
ITC	International Trade Centre
KEBS	Kenya Bureau of Standards
KEPHIS	Kenya Plant Health Inspectorate Service
KNCCI	Kenya National Chamber of Commerce and Industry
KRA	Kenya Revenue Authority
NTBs	Non-Tariff Barriers
PCPB	Pest Control Products Board
REC	Regional Economic Community
SADC	South Africa Development Community
SMEs	Small and Medium Enterprises
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
UAE	United Arab Emirates
UK	United Kingdom
WTO	World Trade Organisation

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Executive Summary

This study was commissioned by TradeMark Africa (TMA) (formerly TradeMark East Africa) with the financial support of the European Union's five-year Business Environment Enhancement and Export Promotion (BEEEP) Programme, which seeks to improve processing, value addition, and access to information as part of efforts to boost Kenya's exports of avocados, mangoes and vegetables; and to create a conducive business environment. The specific objective of this study is to assess existing export tariff and non-tariff barriers encountered on Kenyan exports of fresh vegetables and fruits in the lead export markets, and to develop a framework for reporting and resolving such trade barriers.

As required by the Terms of Reference (TOR), the assignment assessed the following issues:

1. Existing trade regimes between Kenya and her lead export markets for priority fresh vegetables and fruits,
2. Trade enabling conditions in the lead export markets for priority fresh vegetables and fruits,
3. Key considerations for existing, ongoing and future trade-related negotiations between Kenya and her leading trading partners for the identified value chains,
4. Existing trade barriers for the priority fresh vegetables and fruits in the lead export markets, and
5. Existing mechanisms for reporting and resolution of trade barriers encountered in the lead export markets. The study also recommends the appropriate framework for reporting and resolving the identified export trade barriers in each lead market.

The study analysed trade performance[1] of the priority Kenya fresh vegetables and fruits over the period 2018-2022 using the Harmonized System[2] (HS) 2-digit Chapter level, HS 4-digit product grouping level, and HS 6-digit product category level codes.

This enabled identification of nine (9) vegetable groupings categorised at the HS 6-digit level, while two pre-determined fruit categories were retained; namely avocados and mangoes (both categorised under the HS 6-digit level). Consequently, the 9 identified vegetable groups and the 2 pre-determined fruit categories formed the basis of the assessment as required by the TOR scope of work. The HS 6-digit level is used by customs entries to capture international trade data and to prepare export invoices by exporters. Kenya's lead export markets for the 9 vegetable categories, avocados and mangoes were then identified based on export trade performance during the period 2018-2022.

The assessment of export trade barriers was conducted by exploring the MFN[3] tariff rates applied on Kenyan exports of vegetables[4] , avocadoes and mangoes by the importing countries. it also assessed non-tariff barriers to trade (NTBs) using the international definition given by the WTO[5], which defines NTBs as Non-Tariff Measures (NTMs) other than tariffs which cause trade distortions by increasing the price of imported goods or by restricting market entry on imports.

1. Export trade statistics were sourced from the International Trade Centre statistics (www.intracen.org)
2. The Harmonized System is a standardized international numerical method of classifying traded products. It is used by customs authorities around the world to identify products when assessing duties and taxes and for gathering statistics. It allows participating countries to classify traded goods on a common basis for customs purposes.
3. Most Favored Nation (MFN) tariff rates; which apply equally on imports from trading partners that are members of the WTO, unless the exporting country has a preferential trade agreement with the importing country where preferential tariff rates apply; such as provided through the Economic Partnership Agreement (EPA between the EU and Kenya, the EPA between the United Kingdom and Kenya, and the Common Market Protocol (CMP)/Customs Union Protocol (CUP) for EAC countries. The MFN tariff is a non-discriminatory tariff charged on imports, while the preferential tariff provides lower duties on imports members of a given trade agreement. Application of the MFN rate is based on the principle that WTO member countries should treat all their trading partners equally; meaning that the importing country should not treat one trading partner "more favourably" than other trading partners. This means no WTO member country should give special treatment to goods or services imported from one particular trading partner, unless such partner has a preferential tariff arrangement with the importing country.
4. The vegetables include fresh beans, peas, baby corns categorised under the Harmonised System Chapter 7
5. World Trade Organisation.

There are seven (7) WTO categories in this respect, namely:

1. Government Participation in Trade and Restrictive Practices Tolerated by Governments;
2. Customs and Administrative Entry Procedures;
3. Technical Barriers to Trade (TBT);
4. Sanitary and Phytosanitary (SPS) Measures;
5. Specific Limitations;
6. Charges on Imports; and
7. Other NTB Categories.

The study collected data for use in analysing all issues stipulated in the Terms of Reference (TORs) from relevant documents and consultations with stakeholders cutting across exporters, the Government of Kenya State Department of Trade (with regard to Kenya's export policy environment), and regulatory agencies which are involved directly in assisting producers of vegetables and fruits on regulations governing exports of fresh produce, and authorizing and approving fresh produce exports. Based on analysis of Kenya's export performance for each of the 9 prioritised fresh vegetables, avocados and mangoes, the following countries emerged as Kenya's lead export markets for specific fresh vegetable categories: France, UK, Netherlands, Uganda, South Sudan, India, Pakistan, United Arab Emirates, and Vietnam. For avocadoes the Netherlands, United Arab Emirates, France, Spain and Saudi Arabia take the lead; while for mangoes United Arab Emirates, Saudi Arabia, and Oman are the lead export markets.

Kenya recorded a trade surplus for each of the prioritized vegetables, avocados and mangoes in each of the lead export markets and also at the world level during the period 2018-2022. In this regard, total vegetables exports amounted to US$ 1.14 billion while imports amounted to US$ 0.204 million; thereby recording a trade surplus worth US$ 932.7 billion during the period 2018-2022. Total avocados exports amounted to US$ 606 million while imports amounted to US$ 0.512 million; thereby recording a trade surplus worth US$ 605.5 million during the period. Total mangoes exports amounted to US$ 90 million while imports amounted to 1.18 million; thereby recording a trade surplus worth US$ 88.76 million during the period of analysis.

The analysis of Kenya export requirements show that before making an attempt to export to each of the lead markets, exporters of horticultural produce (fresh fruits, vegetables, plants and flowers) must comply with the Government of Kenya (GOK) procedural requirements, including: Registration as an exporter through the Agriculture and Food Authority's (AFA) Integrated Management Information System[6] ; Issuance of an export certificate from the AFA HCD as an indication that the consignment has been cleared for export; Issuance of a phytosanitary certificate by the Kenya Plant Health Inspectorate Service (KEPHIS) to assure that the plants and plant products are free from regulated pests and conform to phytosanitary requirements of the importing country; and issuance with market-specific rules of origin by either KRA or Customs Directorate of KNCCI.

Regarding regional and bilateral trade agreements to which Kenya is a signatory and which are relevant to Kenya exports of fresh vegetables and fruits (avocados and mangoes), analysis shows that Kenya has entered into trade agreements with the EU, UK, EAC, the Tripartite[7] Regional Economic Communities (RECs), and the AU (in the framework of AfCFTA[8]). However, Kenya has not concluded any trade agreements with the Asian countries which have emerged as Kenya's lead markets for the prioritized products. Each of the existing trade agreements contain specific provisions on customs, SPS, TBT, trade defence measures and a mechanism for resolving trade disputes.

6. AFA is mandated to regulate all scheduled food crops, legume crops, root crops and tuber crops which are broadly categorized into: cereals, legumes and roots, and tubers. Exporters of food crops are therefore required to obtain a certificate of registration from AFA in order to export such scheduled crops.
7. The Tripartite RECs comprise COMESA, EAC and SADC
8. African Continental Free Trade Area

The case for Asian lead markets where trade agreements do not exist will require that Kenya vegetables and fruits exports will have to conform with the provisions contained in relevant WTO[9] trade agreements; notably:

1. The Agreement on Agriculture;
2. The Agreement on Rules of Origin;
3. The Agreement on SPS;
4. The Agreement on TBT;
5. The Agreement on Anti-Dumping Measures;
6. The Agreement on Customs Valuation;
7. The Agreement on Import Licensing;
8. The Agreement on Subsidies and Countervailing Measures;
9. The Agreement on Safeguards;
10. The Agreement on Trade Facilitation

The provisions contained in these agreements have been analysed to enable exporters to understand and comply with market entry requirements. Any trade disputes encountered on exports to the Asian lead export markets will therefore be notified through the WTO dispute settlement mechanisms until Kenya enters into bilateral trade agreements with then.

The existing trade regimes between Kenya and each of the lead export markets for the prioritised products are governed by regional and bilateral agreements, and by market-specific entry conditions/regulations. In EU and UK, private standards for fresh produce have become t industry norms which are used to confer market entry. For the Asian lead export markets, private standards and official market entry requirements are not stringently applied, except in India, which recently issued market entry requirements on avocados. African countries including Uganda and South Sudan do not apply private standards.

Each of the markets have their own distinct trade enabling factors. In this regard, the UK has historical relations with Kenya spanning back to the colonial era. UK also has an attractive purchasing power for domestic and imported goods based on its high level of GDP and GDP per capita, while air freight logistics are well structured thereby making it easy to access the UK market. Kenya has a good logistical route for air and sea transport of fresh produce to EU countries. EU is also a highly attractive market for Kenya's fresh vegetables and fruits based on its high GDP per capita. There are also numerous trade associations in EU which are involved in lobbying for an enabling business and trade environment and business networking. Business and trade development is also fully supported by the European Commission through various programmes; complemented by efficient provision of business development services. For the Asian markets, high purchasing power, and an emerging middle-income class and quality conscious consumer base offers increased market opportunities. The Asian countries in the Middle East region are particularly characterised by high GDP per capita levels. These are also desert countries which depend on imported fresh produce. Kenya must program market-specific measures for each of its lead export markets for fresh vegetables, avocados and mangoes to enable successful market entry and retention.

Both the EU block and UK have very stringent and mandatory quality standards and market entry requirements which are stringently applied by competent authorities and supermarket chains. The private standards cut across environmental measures, climate change, human rights, and the reporting framework to proof compliance. Although the private standards are not legally found in law, they have emerged as industry norms, effectively doubling the effects of official market access standards, thus translating into market entry barriers. Some of the standards imposing bodies have a presence in exporting countries such as Kenya, aimed at ensuring that producers and exporters apply the specified standards, failure to which the relevant products are subjected to market access sanctions.

9. World Trade Organization

For fresh produce exports to EAC markets notably Uganda and South Sudan, no specific export trade barriers were identified through consultations with stakeholders and review of NTBs reported in the Tripartite online NTBs reporting mechanism. However, exporters of vegetables and fruits to Uganda need to be aware of measures applied on imports to protect human, animal and plant health and the environment, which could translate into NTBs if not complied with. Such measures include tolerance limits on pesticide residues; hygienic practices during production and handling of post-harvest produce; inspection and clearance procedures for imported food and food products; and product quality and testing requirements for various categories of vegetables and spices. For South Sudan, the major trade obstacle relates to the dilapidated condition of some sections of the Kitale-Lokichogio road corridor which connects Kenya and South Sudan; notably the Lesseru[10]-Kitale (B14) (55km) and Morpus-Lokichar road (A1) (138km) sections. As a consequence, trade between Kenya and South Sudan and transit traffic to and from South Sudan is forced to reroute through the longer route via Uganda through Malaba OSBP-Elegu/Nimule-Juba; which effectively translates to added transport time and costs. On a positive note however, it is noted that in June 2022, the Government of Kenya through the Kenya National Highways Authority (KeNHA) as the implementing agency, and with funding from the African Development Bank (AfDB), commissioned the design works for improvement of the road sections of concern. It is expected that when completed, the road upgrades will significantly enhance trade connectivity between Kenya and South Sudan through the Lokichogio border post instead of the longer Malaba-Elegu/Nimule-Juba transport route.

For Asian markets, a serious trade barrier is that Kenyan has not concluded any bilateral trade agreement with any of the Asian countries. This implies no preferential trade tariffs are given on Kenyan originating goods, including on fresh produce, and therefore the Most Favoured Nation (MFN) tariff rates apply. In addition, no preferential arrangements apply on Kenyan originating goods in the Asian markets regarding application of SPT, TBT, customs formalities, and on resolution of trade obstacles encountered on exports; which effectively means Asian countries have to apply WTO provisions on imports from Kenya. Currently, there is a ban on Kenya originating avocadoes in UAE, and an import ban on Kenya originating avocadoes and mangoes in Oman due to non-compliance with the specified Maximum Residue Levels (MRLs) on pesticides used to control pests. In India, a new NTB has emerged requiring upfront payment of a 30% import levy on fresh produce, which in future will make market entry for fresh produce into the Indian market very difficult. Additionally, exports to Middle East countries sometimes must be rerouted through Europe since Kenya has not developed serious logistical services particularly for direct exports to these countries.

For the African markets, the most serious trade obstacles relate to poor transport logistics as a result of poor development of road and rail networks, which is compounded by poor dissemination of information to exporters on market access conditions in most African countries, and un-harmonised trade procedures (notably SPS, TBT, customs, rules of origin and trade defence measures).

Resolution of the identified export trade barriers should be guided by the existing mechanisms already provided in the EU-Kenya EPA, the UK-Kenya EPA, the EAC Treaty, the Tripartite Free Trade Area (TFTA) Agreement, and the African Continental Free Trade Area (AfCFTA) Agreement. The NTBs resolution process should prioritise capacity building of the Government of Kenya (GOK) National Focal Points (NFPs) and National Monitoring Committee (NMC) to identify, validate, build evidence, and facilitate resolution of reported NTBs. The GOK should also allocate sufficient annual NTB-specific budgets to enable NFPs and NMC to efficiently discharge their mandates.

The recommended measures which should be pursued to ensure Kenya increases fresh produce exports in each of the identified lead markets are summarised below.

10. Also locally known as Maili Tisa

LEAD MARKET	MAIN RECOMMENDED MEASURES
European Union	1. Completion of detailed protocols for implementation of the EU-Kenya EPA (trade and investment; agriculture, industrial development and diversification of trade; trade and sustainable development; EPA implementation and monitoring; TBT; SPS; ROO; Trade Defence Measures, and Customs procedural requirements (tariff classification, customs valuation, co-operation between EU and Kenya/EAC/ Customs Administrations, re-exportation of goods, import clearance procedures, duty refunds and remissions, etc.) 2. Development of a detailed business guide on applicable official mandatory and private standards applied on imported fresh vegetables and fruits under the EEC trade regime. 3. Development of an NTBs reporting, monitoring and elimination framework/mechanism modelled on similar mechanism applied by the Tripartite RECs (EAC, COMESA, SADC) or the ITC Trade Obstacles Alert Mechanism (TOAM) 4. Development and implementation of a fresh produce sensitization programme to be funded under the EU-EAC EPA Development Cooperation Framework
United Kingdom	1. Completion of detailed protocols for implementation of the UK-EAC EPA similar to those for EU-Kenya EPA. 2. Development of a detailed business guide on applicable official mandatory and private standards applied on imported fresh vegetables and fruits in UK 3. Development of an NTBs reporting, monitoring and elimination framework similar to the one recommended under EU-Kenya EPA 4. Development and implementation of a fresh produce sensitization programme similar to the one recommended under EU-Kenya EPA, and making a request to UK government to support its implementation. 5. Negotiating with UK government and Kenyan finance institutions to support Kenya producers and exporters of vegetables and fruits to scale up their farm-level infrastructure to enable efficient large commercial transactions. 6. Development of a Kenya government programme for value-addition of fresh produce so as to increase the shelf-life of products.
East African Community	1. Prioritise the usage of Time-Bound Programme (TBP) and Tripartite online system for NTBs reporting, monitoring and elimination and to increase participation in reporting NTBs through the Tripartite system focusing on vegetables and fruits. 2. Ensure NTBs reported through the TBP and Tripartite system captures comprehensive information on reported NTBs by traders, including the WTO NTBs classification codes, the impacts of reported NTBs (time loss, business costs, value/volume of rejected and wasted products, and lost business opportunities). 3. Prioritise dissemination of information on competent authorities responsible for NTBs elimination within EAC and Tripartite region, progress achieved in resolving reported NTBs, and reasons for "non-actionable" NTBs. Additionally ensure the Tripartite system is sensitised amongst producers and exporters of fresh produce to facilitate increased uptake. 4. GOK[11] to lead in convincing EAC and Tripartite countries to allocate sufficient annual budget for engagement of dedicated NFPs and NMCs to enable a comprehensive and efficient approach to NTBs resolution at national and regional levels; including impact analysis, validation and verification of reported NTBs, scheduled meetings of regional NMCs, design and implementation of elimination action plans, and monitoring and dissemination of progress achieved in NTBs elimination. 5. Prioritise enactment of NTBs legal framework by COMESA and SADC similar to EAC NTBs Act 2017 to increase efficiency in NTBs elimination within Tripartite region. Additionally prioritise domestication of NTBs Act 2017 into national trade-related laws of EAC Member States to enable binding commitments on NTBs resolution; and back such national legal frameworks with final resolution provisions to discourage wayward MDAs from introducing new trade laws, regulations and requirements without prior regional consultations and agreement. 6. Increase sensitisation of the STR and SCOO to enable CBTs to understand how the STR/SCOO works, measures to ensure compliance, and benefits of using the SCOO in cross border trade activities. Also publish the EAC common list of products that can potentially benefit from STR/SCOO based on their eligibility UNDER EAC ROO; and facilitate increased CBT trade by capacitating the Trade Information Desks with dedicated Trade Information Desks Officers (TIDOs) with annual budgets and working offices for NTBs activities.

11. Government of Kenya

LEAD MARKET	MAIN RECOMMENDED MEASURES
East African Community	1. GOK to lead in ensuring harmonisation of EAC Partner States' tax regimes (particularly on domestic taxes such as VAT and excise duties); harmonisation and mutual recognition of national SPS measures by competent authorities as provided for in the EAC SPS Protocol of 2013 and the SPS Bill of September 2016; harmonisation and mutual recognition of national quality standards and certification marks issued by national competent authorities as provided for in the EAC SQMT Act (2006); and finalisation of the SPS Bill 2016 into an Act of law. 2. GOK to lead in development of Tripartite coordination procedures for regional consultative meetings on NTBs reporting, monitoring and resolution based on experiences so far gathered at EAC level, including the institutional structure, working modalities, and coordination between NMCs, the RMC and policy making organs.
Asian Markets	**For all Asian Countries** 1. The GOK should prioritize sensitization of exporters on the contents of MFN tariff rates and other market entry measures currently applied Asian countries on imports from third countries 2. Sensitise fresh produce exporters on the need to enter into contractual agreements with importers (particularly in Middle East) in order to eliminate the recurrent problem of failed payments and consequent export losses. 3. Design and implement a trade risk financing scheme for fresh produce exporters, aimed to cover small scale exporters in case their exports (particularly to Middle East countries) are not honoured by importers. **INDIA** 1. The GOK regulatory authorities (HCD, KEPHIS and PCPB) should: **i)** Ensure farmers adhere strictly to the Indian requirements for exporting fresh avocados to India as detailed in gazette notice of16th August 2023. The gazette requires that Kenya should assure that consignments are free from specified insects/mites of concern to India; including Ceratitis capitate (Mediterranean fruit fly), Ceratitis cosyra (Marula fruit fly), Ceratitis rosa (Natal fruit fly), Ceroplastes destructor (White wax scale), Cryptophlebia leucotreta (False Codling Moth), Pseudotheraptus wati (Coconut bug), Selenaspidus articulates (West Indian red scale), and Spodoptera littorali (Cotton leaf worm). It also requires that registered Kenya avocado orchards should have approved pack houses, that transport of harvested fruits from orchards to designated pack houses should use of closed trucks, that avocados destined for India should be stored separately from fruits intended for other markets; and avocados for India should be accompanied by a KEPHIS inspection certificate prior to shipment. **ii)** Facilitate increased sensitization of avocado producers on the Indian market entry requirements, including ensuring that farmers stop harvesting unripe fruits as has been alleged to be a practice by avocado associations. 2. The GOK through MITI[12] should closely follow up conclusion of a trade agreement between Kenya and India based on the MOUs that were signed between the two countries in December 2023; including specific provisions and protocols on SPS, TBT, Customs, ROO, trade defence measures, and resolution of trade obstacles which may be encountered in the course of trade.

12. Ministry of Investment, Trade and Industry

LEAD MARKET	MAIN RECOMMENDED MEASURES
Asian Markets	**PAKISTAN** The GOK through MITI should start serious negotiations for a bilateral trade agreement between Kenya and Pakistan that encompasses all necessary trade provisions, including SPS, TBT, customs, trade defence measures, and a framework for resolution of trade obstacles; aimed in retaining and increasing Kenya's exports to Pakistan including vegetables and fruits. **UNITED ARAB EMIRATES** 1. The GOK through MITI should closely follow up conclusion of the Comprehensive Economic Partnership Agreement (CEPA) agreed with UAE in December 2023 to ensure that the numerous measures applied by UAE can be waived for fresh produce exports that are compliant with UAE market entry requirements. 2. Kenya should prioritise UAE as a key export market since UAE consumers have high purchasing power which is supported by the emergence of UAE (particularly Dubai) as the international hub for food trade in the Middle East. Kenya should also prioritise promotion of mangoes (particularly the Alfonso variety) in UAE market as the market entry standards less stringent than the traditional market in EU **SAUDI ARABIA** The GOK through MITI should start serious negotiations for a bilateral trade agreement between Kenya and Saudi Arabia, including provisions on SPS, TBT, customs, trade defence measures, and a framework for resolution of trade obstacles; aimed in retaining and increasing Kenya's exports to Saudi Arabia including vegetables and fruits. **VIETNAM** The GOK through MITI should pursue the initiative started in December 2019 by the then Kenya Cabinet Secretary (CS) for Foreign Affairs to establish stronger collaboration between Kenya and Vietnam on economic and trade fields; aimed to conclude a bilateral trade agreement. In the interim, the Kenya Government should facilitate the conduct of a comprehensive sensitisation campaign amongst fresh producers and exporters on the import entry requirements applied in Vietnam; focusing on: 1. Product specifications: Where Vietnam requires that all import shipments of fresh fruits and vegetables must comply with regulatory requirements stipulated in Circular No. 13/2011/TT-BNNPTNT relating to Maximum Levels for Chemical Contaminants and prohibited chemicals. 2. Rules of Origin: The provisions of the WTO Agreement on Rules of Origin which apply on exports to Vietnam. 3. Duties and taxes on fresh vegetables and fruits imported into Vietnam: Where fresh fruits and vegetables attract different MNF tariff rates but are not subject to VAT. 4. Certificate for exports of vegetables and fruits to Vietnam: Stipulated in Article 10 of the Government of Vietnam Decree No. 02/ 2007/ ND-CP, which requires plant quarantine on imported fresh produce into Vietnam 5. Customs procedures and documentation for exporting vegetables and fruits to Vietnam

LEAD MARKET	MAIN RECOMMENDED MEASURES
Africa Continental Free Trade Area	**The GOK should sensitize fresh produce exporters targeting African markets on:** 1. Key market access provisions contained in the Trade in Goods Protocol of the AfCFTA Agreement; namely: customs co-operation and mutual administrative assistance, trade facilitation, TBT, SPS, rules of origin, transit trade, and trade remedies. 2. The AfCFTA dispute resolution mechanism (https://tradebarriers.africa/). 3. Modalities of ensuring efficient transport logistics to target African markets 4. The feasible payment systems to use when conducting trade within the African continent 5. The existing market linkages within the African continent; including information on business contacts, applicable prices on goods, cost-effective trading routes; applicable rules of origin, quality standards and SPS among others.
Supply-side measures for all target export markets	**The GOK should prioritise:** 1. Support to Ministry of Agriculture (MOA) to offer extension services to fresh produce farmers on safety protocols to observe when dealing with chemicals/pesticides used to control pests, market-specific requirements on use of pesticides, changes in pesticides specifications (including withdrawn by certain markets), train in setting up of pests traps (such as for male fruit flies, and hot water treatment methods for eradication of fruit fly; aimed in increasing compliance with market-specific requirements regarding absence of plant pests/diseases and specified MRLs on pesticide residues. 2. Supporting KEPHIS and PCPB with sufficient budgets for surveillance and quarantine activities at farm level. 3. Incorporation of the Kenya Bureau of Standards (KEBS) in the Single Window System for authorization of packaging and labelling used on exports, aimed to increase marketability of fresh produce in export markets through improved stability and aesthetic presentation of packaging and information on content of goods. The GOK should also support KEBS to implement the Kenya GAP standard 1758 developed in 2004 as a code of practice for the Kenya horticulture industry to ensure farmers comply with requisite hygienic and safety practices during production, handling, and marketing of fresh produce (vegetables, fruits, herbs and spices, flowers and ornamentals). 4. Operationalization of the National Trade Facilitation Committee as required by the WTO Trade Facilitation Agreement to comprehensively handle trade facilitation matters based on need; including facilitating resolution of market entry constraints, particularly in countries with which Kenya does not have a trade agreement, such as the Asian lead markets for vegetables and fruits; facilitating opening of new markets, and consolidating existing markets. 5. Removal of temporary export bans on sea freight for avocados by HCD during Kenya's avocado off-season in favour of other measures that ensure traders do not export un-mature avocados; aimed in ensuring exporters can take advantage of Tanzania's avocado harvest season between December and March, thus enabling an all-year round avocado export business. 6. Offering advisory services to SME exporters on genuine importers of fresh produce and their contacts, and conducting due diligence in key export markets on credible importers with whom to enter into export agreements. 7. Harmonisation of seed regulations for fresh produce at COMESA level, aimed in improving use of certified seeds and which can guarantee increased yields for export markets. 8. Supporting producers and exporters to improve their production processes, quality assurance systems, application of pesticides for pest control, packaging and labelling standards, storage/warehousing processes, and transportation facilities. 9. Supporting fresh produce farmers to aggregate their produce through investment in shared cold storage and refrigerated transport facilities in order to guarantee safe storage of perishable fresh produce until deliveries to exporters. 10. Increased promotion of fresh products in export markets by KEPROBA, aimed to ensure Kenyan originating products are directly shipped to intended markets and correctly displayed as Kenyan originating particularly in Middle East supermarket, compared with the current practice where such produce appear as Netherlands originating. This would ensure exporters realize better profit margins for exporters.

1. INTRODUCTION

1.1 Overview

This assessment of export trade barriers facing Kenyan exports of fresh vegetables and fruits was commissioned by TradeMark Africa (TMA) (formerly TradeMark East Africa) with the financial support of the European Union's five-year Business Environment Enhancement and Export Promotion (BEEEP) Programme; which aims to boost Kenya's exports of avocados, mangoes and vegetables.

The BEEP Programme additionally aims to support the Government of Kenya to create a conducive business environment through three main objectives:

1. Specific Objective 1: Increased and diversified trade in goods in the selected value chains;
2. Specific Objective 2: Reduced trading times and costs; and
3. Specific Objective 3: Enhanced Business Climate.

1.2 Study Objective

The objective of this study was to assess the existing export tariff and non-tariff barriers encountered on Kenyan exports of fresh vegetables and fruits in the lead export markets, and to develop a framework for reporting and resolving such trade barriers. The assignment findings are intended to facilitate increased Kenyan exports of avocadoes, mangoes, and vegetables through enhanced market access, resolution of compliance challenges faced by exporters, and promotion of a conducive trade environment for exporters.

1.3 Scope of Work and Specific Activities

1.3.1 Scope of Work

As required by the Terms of Reference (TOR), the assignment has assessed a wide range of issues related to export trade barriers facing fresh vegetables and fruits in Kenya's lead export markets, including:

1. The existing trade regimes between Kenya and her leading export markets for priority fresh vegetables and fruits;
2. The trade enabling conditions in the leading export markets for priority fresh vegetables and fruits;
3. The key considerations for existing, ongoing and future trade-related negotiations between Kenya and her leading trading partners for the identified value chains;
4. Identification of existing trade barriers for the priority value chains in the lead export markets;
5. Analysis of existing mechanisms aimed to address the trade barriers in the prioritized markets; and
6. The design of a Kenya Export NTBs Monitoring and Reporting Framework for addressing the identified export trade barriers for the priority value chains.

1.3.2 Specific Activities

The assessment of trade barriers has incorporated several activities as required by the TOR, including:

1. Assessment of trade flows between Kenya and her lead export markets for priority fresh vegetables and fruits.
2. Assessment of Kenya's market potential in leading export markets for vegetables and fruits;
3. Analysis of the Regional and Bilateral Trade Agreements that impact on Kenya's export trade for the prioritized vegetables and fruits; focusing on trade agreements between Kenya and her leading export market partners; including the European Union- Kenya EPA, the United Kingdom-Kenya EPA, the EAC Treaty and related Protocols, and the trade regime between Kenya and selected Asian/Middle East countries (namely: India, Pakistan, United Arab Emirates, Vietnam, and Saudi Arabia). It has also incorporated an assessment of the African Continental Trade Area (AfCFTA) Agreement due to the expected prospects of expanding Kenya's export markets after the AfCFTA.
4. Analysis of the prevailing trade regimes between Kenya and her lead export markets for fresh vegetables and fruits
5. Assessment of trade enabling provisions in Kenya's lead export markets for fruits and vegetables
6. Analysis of the necessary provisions in ongoing/future trade-related negotiations to facilitate increased trade in the identified value chains

7. Assessment of export trade barriers facing Kenya's exports of fresh vegetables and fruits in the leading export markets.
8. Analysis of existing mechanisms to address the export trade barriers in the leading markets for the prioritized value chains.
9. The recommended Kenya Export NTBs Frameworks to facilitate reporting, monitoring and resolution of identified trade barriers affecting fresh vegetables and fruits in lead export markets.

1.4 Study Methodology

1.4.1 Assessment of trade flows between Kenya and her lead export markets for priority fresh vegetables and fruits

The assignment conducted an analysis of the export trade performance[13] for priority Kenya fresh vegetables and fruits over the period 2018-2022 at the Harmonized System[14] (HS) 2-digit Chapter level, HS 4-digit product grouping level, and HS 6-digit product category level. This culminated into identification of nine (9) vegetable product groupings at the HS 6-digit level, while the two (2) pre-determined fruit categories were retained, namely avocados and mangoes (both categorized under the HS Chapter 08 at the HS 6-digit level). Consequently, the 9 identified vegetable groups and the 2 pre-determined fruit categories forms the basis of the assessment of tariff and non-tariff barriers as outlined in the TOR scope of work. The focused analysis of export trade barriers using product groupings is justified by the fact that Kenya exports of all products including the prioritized vegetables and fruits are captured in customs trade data at the HS 6-digit level. The HS 6-digit level is used to prepare export invoices by exporters for their customers in export markets. Kenya's lead export markets for the 9 vegetable categories, avocados and mangoes were then identified based on export performance during the period 2018-2022.

1.4.2 Identification and classification of export trade barriers

The assessment of export trade barriers was conducted using the following methodology:

1. Exploring the MFN tariff rates applied on Kenyan exports of vegetables and fruits (avocadoes and mangoes) by the importing countries. It also assessed non-tariff barriers to trade (NTBs) using the international definition given by the WTO, which defines NTBs as Non-Tariff Measures (NTMs) other than tariffs which cause trade distortions by increasing the price of imported goods or by restricting market entry on imports.
2. Assessing market entry barriers ("At-the-Border Obstacles") encountered at the entry ports of Kenya's lead export markets for fresh vegetables and fruits, which are mainly associated with non-compliance with specified official regulations in the target export market. Based on trade data analysis, the lead export markets that were identified as the focus of the study are the EU countries, United Kingdom, EAC countries (specifically Uganda and South Sudan), and selected Asian countries (India, Pakistan, United Arab Emirates, Viet Nam, and Saudi Arabia).
3. Assessing market access barriers (Border-Out obstacles) encountered even after complying with official regulations in the target export market. The relevant NTBs often appear as private standards set by importers, lobby groups and major super markets ; and relate to non-compliance with environmental conservation safeguards, and non-adherence to international human rights such as zero tolerance to child labour, respect for gender rights, and health and safety of workers. The NTBs may also include transportation bottlenecks from the port area to the importer's premises; checks at police roadblocks, and during inspections for conformance with specified axle load and gross vehicle mass (GVM) in the export country.

13. Export trade statistics are sourced from the International Trade Centre statistics (www.intracen.org)
14. The Harmonized System is a standardized international numerical method of classifying traded products. It is used by customs authorities around the world to identify products when assessing duties and taxes and for gathering statistics. It allows participating countries to classify traded goods on a common basis for customs purposes.

The assessment specifically used the seven (7) defined WTO NTBs categories to identify the possible market entry and access barriers encountered on Kenya's exports of prioritized vegetables and fruits in the lead export markets as elaborated in table 1 below. The WTO NTBs categorisation was used as it enables the use of a standardised and internationally accepted template, thus enabling a clear understanding of the meaning of each identified trade obstacle and how resolution measures can be pursued. This will also enable Kenyan authorities to conduct meaningful follow up discussions with their counterpart institutions in the lead export markets; thus, facilitating quick consensus on practical solutions for eliminating the identified export trade obstacles; including modalities for real-time reporting, validation and resolution of such market entry/access barriers.

Table 1: Types of NTBs encountered on exports based on the WTO categorization of NTBs

NTBS PARTS & DESCRIPTIONS		SECTIONS & DESCRIPTION		POSSIBLE MARKET ENTRY BARRIERS WHICH WERE ASSESSED
PART	**DESCRIPTION**	**SECTION**	**DESCRIPTION**	
PART 1	Government Participation in Trade and Restrictive Practices Tolerated by Governments	A	Government aids, including subsidies and tax benefits	1. Evidence of any special financial support offered by the governments of Kenya's lead export markets for vegetables and fruits to national producers (such as production subsidies) which could end up outcompeting equivalent imported products. 2. Evidence of participation by the governments of Kenya's lead export markets for vegetables and fruits in production and trade in vegetables and fruits, such as through state corporations. 3. Estimated magnitude (by value or volume) of potential market losses by Kenyan producers and exporters due to application of government financial support to national producers and/or direct participation in production and trade in vegetables and fruits.
		B	Countervailing duties	
		C	Government procurement	
		D	Restrictive practices tolerated by governments	
		E	State trading, government monopoly practices, etc.	
PART 2	Customs and Adminis-trative Entry Procedures	A	Anti-dumping duties	1. Import duties and domestic taxes imposed on imported fresh fruits and vegetables in the lead export markets. 2. The extent to which market access duty preferences provided through regional and/or bilateral trading arrangements (such as the EU-Kenya EPA, UK-Kenya EPA and EAC CMP) are applied or complied with by the importing country. 3. Assessment of reasons given by the lead export markets for not applying market access duty preferences provided in regional and bilateral trade agreements, where cases of non-application have been reported by exporters of vegetables and fruits. 4. Product-specific rules of origin applied on fresh fruits and vegetables by Kenya's lead export markets in order to proof that the products qualify for preferential import duties as provided under preferential trade agreements (such as EAC CMP, EU-Kenya EPA, UK-Kenya EPA and other existing regional/bilateral trade arrangements). 5. Requirements for production of movement certifications to proof that the imported fresh fruits and vegetables have not undergone further processing during transportation from Kenya to the target lead export markets. The EU for example requires production of that a Movement certificate EUR.1 issued by the customs authority of the exporting country should accompany any exported goods in order to proof that the goods have not undergone further processing during transportation through a third country before arrival at the entry port of an EU country. 6. Comparison of the customs valuation methods applied by Kenya's lead export markets for vegetables and fruits with those applied in Kenya, aimed to understand whether there are any major variations that could end up as market access barriers.
		B	Customs valuation	
		C	Customs classification	
		D	Consular formalities and documentation	
		E	Samples	
		F	Rules of origin	
		G	Customs formalities	
		H	Import licensing	
		I	Pre-shipment inspection	

Table 1: Types of NTBs encountered on exports based on the WTO categorization of NTBs

NTBS PARTS & DESCRIPTIONS		SECTIONS & DESCRIPTION		POSSIBLE MARKET ENTRY BARRIERS WHICH WERE ASSESSED
PART	DESCRIPTION	SECTION	DESCRIPTION	
PART 3	Technical Barriers to Trade (TBT	A	General	1. Technical rules specified by Kenya's lead export markets for packaging materials used on imported fresh fruits and vegetables 2. Labelling requirements for packaged imported fresh fruits and vegetables applied by Kenya's lead export markets; including weight and size, product identity, product specifications, and shelf-life restrictions. 3. The costs associated with the packaging and labelling requirements in Kenya's lead export markets for vegetables and fruits which end up as market access barriers.
		B	Technical regulations and standards	
		C	Testing and certification arrangements	
PART 4	Sanitary and Phytosanitary (SPS) Measures	A	General	1. Evidence of demand-driven SPS-related market standards applied by Kenya's lead export markets for vegetables and fruits (such as standards demanded by supermarket chains in developed economies like EU countries and the UK). Such standards may end up becoming market access barriers for imported fresh vegetables and fruits. They could appear as specifications of materials used in packaging products, product shape and/or size and colour, etc. 2. Evidence of occasional requirements by Kenya's lead export markets for vegetables and fruits (such as EU and UK) for the exporting countries to conduct national, seasonal, special, and/or commodity-specific surveillance of agricultural crops production aimed to prevent potential disease risks, emergence of pests and/or unfavourable market trends. In the case of the current assessment, such occasional requirements would apply to imported vegetables and fruits. 3. Evidence of occasional issuance of pest lists by Kenya's lead export markets for vegetables and fruits requiring producing/exporting countries to provide proof that vegetables and fruits are free from pest infestation, or that they originate from pest-free areas. 4. Regulations on tolerance limits on chemicals used to control pests and diseases on fresh fruits and vegetables by Kenya's lead export markets for vegetables and fruits. Such regulations may end up as market entry barriers if producers in the exporting countries lack technical knowledge on how to apply chemicals used during production of vegetables and fruits. 5. Evidence of a list of restricted chemicals and substances used to control pests and diseases on fresh fruits and vegetables Kenya's lead export markets for vegetables and fruits, which end up as market entry barriers if producers lack the requisite technical knowledge for application. 6. Food safety, hygiene and quarantine requirements applied by Kenya's lead export markets for vegetables and fruits on imported fresh fruits and vegetables which may end up as market access barriers. 7. Testing, certification and traceability requirements applied by Kenya's lead export markets on imported fresh fruits and vegetables; which may end up as market entry barriers if the imported products fail to meet the specified SPS requirements or if the exporters are unable to provide proof on maximum residue levels of chemicals used during production of vegetables and fruits. An example of market access obstacles associated with the testing, certification and traceability requirements is demonstrated by EU requirements for food-related imports which are specified in the Food Contact Materials (FCM) Regulation 9EC) 1935/2004. The regulation provides for (a) adherence to good manufacturing practices (GMP), (b) declaration of compliance to GMP, (c) traceability information in case of harm to human health, and (d) mandatory lab testing against restricted substances on food items traded within EU markets. While the FCM is well intended with the aim of ensuring that FCM are not harmful to human health and that they do not alter food characteristics, they may end up as NTBs if the producers/exporters lack the technical competence to comply with the requirements.
		B	SPS measures including chemical residue limits, disease freedom, specified product treatment, etc.	
		C	Testing, certification and other conformity assessment	

Table 1: Types of NTBs encountered on exports based on the WTO categorization of NTBs

<table>
<tr><th colspan="2">NTBS PARTS & DESCRIPTIONS</th><th colspan="2">SECTIONS & DESCRIPTION</th><th rowspan="2">POSSIBLE MARKET ENTRY BARRIERS WHICH WERE ASSESSED</th></tr>
<tr><th>PART</th><th>DESCRIPTION</th><th>SECTION</th><th>DESCRIPTION</th></tr>
<tr><td rowspan="12">PART 5</td><td rowspan="12">Specific Limitations</td><td>A</td><td>Quantitative restrictions</td><td rowspan="12">1. Evidence of discriminative sourcing of imported vegetables and fruits in favour of specified countries in Kenya's lead export markets for vegetables and fruits, which could have ended up outcompeting Kenya vegetables and fruits on price in the lead export markets.
2.)Evidence of any seasonal market entry bans, occasional border closures, border blockages, and quantitative restrictions which may have been introduced by Kenya's lead export markets on imported vegetables and fruits; aimed to protect national producers of similar/equivalent products from the loss of market shares.
3. Evidence of any price controls introduced on vegetables/fruits by the lead export markets with the intention of protecting consumers from inflationary trends.
4. Evidence of any requirements on marking, labelling and packaging which may have been introduced by Kenya's lead export markets for vegetables and fruits with the specific intention of blocking the import entry of vegetable/fruits into domestic markets.</td></tr>
<tr><td>B</td><td>Embargoes and other restrictions of similar effect</td></tr>
<tr><td>C</td><td>Screen-time quotas and other mixing regulations</td></tr>
<tr><td>D</td><td>Exchange controls</td></tr>
<tr><td>E</td><td>Discrimination resulting from bilateral agreements</td></tr>
<tr><td>F</td><td>Discriminatory sourcing</td></tr>
<tr><td>G</td><td>Export restraints</td></tr>
<tr><td>H</td><td>Measures to regulate domestic prices</td></tr>
<tr><td>I</td><td>Tariff quotas</td></tr>
<tr><td>J</td><td>Export taxes</td></tr>
<tr><td>K</td><td>Requirements concerning marking, labelling and packaging</td></tr>
<tr><td>L</td><td>Others</td></tr>
<tr><td rowspan="5">PART 6</td><td rowspan="5">Charges on Imports</td><td>A</td><td>Prior import deposits</td><td rowspan="5">1. Evidence of any specific charges (excluding import duties) on imported vegetables and fruits which is levied at the port of entry of Kenya's lead export markets.
2. Evidence of any arbitrary introduction of port charges on imported vegetables and fruits in Kenya's lead export markets, which could end up restricting market entry.</td></tr>
<tr><td>B</td><td>Surcharges, port taxes, statistical taxes, etc.</td></tr>
<tr><td>C</td><td>Discriminatory film taxes, use taxes, etc.</td></tr>
<tr><td>D</td><td>Discriminatory credit restrictions</td></tr>
<tr><td>E</td><td>Border tax adjustments</td></tr>
<tr><td>PART 7</td><td>Other NTB Categories</td><td>A</td><td>Intellectual property issues</td><td>1. Evidence of any safeguard measures introduced by Kenya's lead export markets with the aim of protecting domestic producers from displacement in trade and/or loss of domestic markets due to sudden increases in the volumes of imported vegetables and fruits.
2. Any other specific market entry and market access obstacles applied by Kenya's lead export markets of vegetables and fruits.</td></tr>
</table>

Source: Author's identification of possible NTBs that could be encountered on exports of vegetables and fruits based on WTO NTBs categorisations

1.4.3 Data collection methods

Two data collection methods were employed, namely review of relevant documents and stakeholders' consultations as elaborated below.

a) Review of Relevant Documents

The assignment reviewed various online and offline literature as follows:

1. Trade data sourced from the International Trade Centre's website (www.intracen.org), which guided analysis of Kenya's trade performance in the prioritized fresh vegetables and fruits (mangoes and avocados) during the period 2018-2022.
2. Trade liberalization and market access provisions contained in the existing regional/ bilateral trade agreements to which Kenya is a signatory.
3. Trade regimes between Kenya and her leading export markets for priority fresh vegetables and fruits; including the import tariff structure applied by the lead markets, rules of origin, SPS measures, technical standards, customs administrative requirements on imports; and existing procedures, laws, regulations and mechanisms to facilitate identification, reporting and resolution of import entry NTBs encountered in the course of exporting to the lead markets.
4. The trade enabling conditions in the leading export markets for priority fresh vegetables and fruits
5. Existing trade barriers facing fresh vegetables and fruits in the lead export markets
6.)Analysis of existing mechanisms aimed to address the trade barriers in the prioritized markets

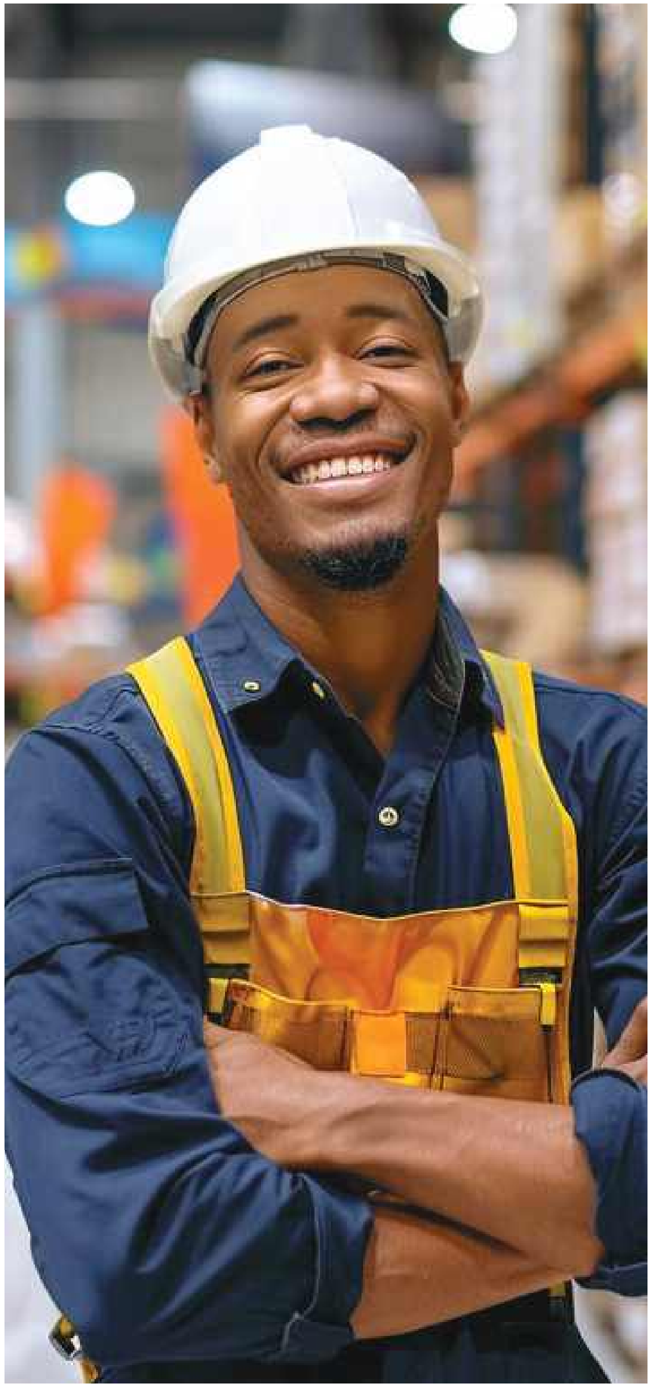
The following documents among others were used to provide information on the above assessment issues:

i) Literature on the EAC economic integration

- The EAC Treaty (2000).
- The EAC Customs Management Act, 2004 and Amendment Bill 2015
- The Common Market Protocol (CMP), 2010
- The CMP Monitoring System (EAMS)
- The EAC Standardisation, Quality assurance, Metrology and Testing Act,2006
- The EAC elimination of Non-Tariff Barriers Act, 2017
- The EAC One Stop Border Posts Act, 2016
- The EAC Vehicle Load Control Act, 2013.
- Individual trade policies

ii) The African Continental Free Trade Area (AfCFTA) framework

- The African Continental Free Trade Area (AfCFTA) Agreement, 2018
- The African Union Agenda 2063
- AfCFTA rules of origin
- AfCFTA e-tariff book
- AfCFTA public user manual
- AfCFTA provisions on NTBs elimination
- AfCFTA NTBS monitoring and resolution mechanism
- AfCFTA trade facilitation provisions
- AfCFTA provisions on SPS measures
- AfCFTA TBT provisions



iii) Kenya-EU Trade Regime

- The EU[15] -Kenya Economic Partnership Agreement (EPA)
- The EU Mark-Up Programme – Kenya avocado export procedures guide
- The EU TBT[16] notification procedures
- The EU-Kenya EPA trade and sustainable development
- The EU-Kenya EPA customs duties on products from Kenya
- The Paris declaration on Aid effectiveness
- The EU-Kenya EPA development matrix
- EU anti-dumping, subsidies, and countervailing regulations
- Various research and position papers used by GOK[17] during negotiations for the Kenya-EU EPA, which were facilitated through the KEPLOTRADE[18] programme (2005-2008); including:
    1. Assessment of market access constraints on Kenya exports to EU
    2. Assessment of regulatory and Administrative regulatory factors responsible for poor productivity of Kenya's lead export sectors
    3. Trade facilitation in the context of EPAs
    4. Manual on Kenya's trade regulatory requirements and impacts to Kenya exports
    5. Comparisons between EU preferential market access options: GSP, Cotonou, EPA, EBA[19]
    6. Consolidated and prioritised development program for negotiations at the ESA[20] regional negotiations forum
    7. The Kenya-EU trade regime: key issues for EPA negotiations under services and goods sectors

iv) Kenya-UK Trade Regime

- The UK-Kenya Economic Partnership Agreement
- The UK-Kenya EPA rules of origin.

v) Kenya-Asian countries bilateral trade agreements

- Any existing bilateral trade agreements between Kenya and Asian regional countries; focusing on India, Pakistan, United Arab Emirates, Viet Nam, Saudi Arabia

The comprehensive list of reference documents is attached as Annex 2.

b) Stakeholders' Consultations

Stakeholders' consultations were conducted using guiding questions on possible export trade barriers as indicated in table 1 above. The assessment divided stakeholders into two main categories:

1. **Primary respondents:**
    - Selected Kenyan horticultural producers and exporters, who were consulted on export trade barriers encountered while exporting vegetables and fruits (avocados and mangoes) to Kenya's lead markets.
    - One regional and three Kenyan Private Sector Business Associations, which were consulted on export trade obstacles which have been reported by their members during exports of horticulture products to EU, UK, EAC/African continent, and Asian countries. The three associations are:
        - East African Business Council (EABC),
        - Fresh Produce Exporters Association of Kenya (FPEAK), and
        - Fresh Produce Consortium of Kenya (FPCK)
        - Avocado Society of Kenya
2. **Secondary Respondents:** Consultations with secondary respondents focused on the trade policy and regulatory requirements and environment for exporting horticultural products from Kenya. The respondents include GOK ministries, state agencies and competent authorities involved in certifying and approving Kenyan exports prior to exit from the country, and also in assisting Kenyan exporters to comply with the regulatory requirements applied by Kenya's lead markets on imports of vegetables and fruits. The secondary respondents comprised:
    - Kenya Ministry of Investment, Trade and Industry (MITI);
    - Kenya Ministry of Agriculture and Livestock Development (MALD; Crops Production Directorate; Horticultural Department);
    - Kenya Revenue Authority (Customs Directorate);
    - Kenya Plant Health Inspectorate Service (KEPHIS);
    - Kenya Pest Produce Control Board (PCPB);
    - Kenya Bureau of Standards; and
    - Agriculture and Food Authority (AFA); Directorate of Horticultural Crops Development (HCD).

In addition, consultations were held with the lead negotiator for the UK-Kenya EPA (Ambassador Johnson Weru; Ministry of Foreign and Diaspora Affairs). The full list of primary and secondary respondents is attached as Annex 3.

15. European Union
16. Technical Barriers to Trade
17. Government of Kenya
18. Kenya Post Lomé Trade Negotiations Programme
19. Everything But Arms
20. Eastern and Southern Africa – ESA was initially used as a terminology to facilitate a post-Lomé trade agreement negotiation between EU and the Eastern and Southern Africa countries.

2. STUDY FINDINGS

2. ASSESSMENT OF KENYA'S TRADE PERFORMANCE IN PRIORITY FRESH VEGETABLES & FRUITS

2.1 Categorization of Priority Fresh Vegetabless & Fruiits

The analysis of export trade performance[21] for priority Kenya fresh vegetables and fruits over the period 2018-2022 at the Harmonized System[22] (HS) 2-digit Chapter level, HS 4-digit product grouping level, and HS 6-digit product category level shows the following scenario:

1. At the HS 2-digit product headings level, Fresh Vegetables are categorized under HS 07, while Fruits are categorized under HS 08.
2. Fresh vegetables categorised under HS Chapter 07 are broadly described as "Edible Vegetables, Certain Roots and Tubers". A breakdown of Chapter 07 into HS 4-digit level shows there are four (4) main product groupings which took a significant US$ 1.3 billion or 92% of Kenya's total exports of fresh vegetables over the period 2018-2022 as summarised in table 2 below. The 4 groups are:
    1. HS 0708: Leguminous vegetables, shelled or unshelled, fresh or chilled; which took 28% of total vegetables exports classified under HS Chapter 07
    2. HS 0709: Other vegetables, fresh or chilled (excl. potatoes, tomatoes, alliaceous vegetable), which took 27% of total vegetables exports classified under HS Chapter 07
    3. HS 0710: Vegetables, uncooked or cooked by steaming or boiling in water, frozen; which total 19% of vegetables exports classified under HS Chapter 07
    4. HS 0713: Dried leguminous vegetables; which took 18% of total vegetables exports classified under HS Chapter 07
3. Fruits categorised under HS Chapter Heading 08 are broadly described as Edible fruit and nuts; peel of citrus fruit or melons. A breakdown of this Chapter into the HS 4-digit level shows that avocados and mangoes are categorised under HS 0804, which is described as "Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried". This product group took 62% of the total fruits export market during the period 2018-2022 as shown in table 3 below.
4. Further breakdown of the above 4 vegetable product groupings shows there are nine (9) vegetable categories, which combined took US$ 1.11 billion or 86% of total vegetables' exports during the period 2018-2022 as shown in Annex 4. As summarised in table 4 below, 9 prioritised vegetables took the following shares of total exports within their product grouping:
    1. Fresh or chilled beans, shelled or unshelled (070820) which took 59% of HS 0708 total exports during the period 2018-2022;
    2. Fresh or chilled leguminous vegetables, shelled or unshelled (HS 070890) which took 28% of HS 0708 total exports;
    3. Fresh or chilled peas, shelled or unshelled (HS 070810) which took 12% of 0708 total exports;
    4. Fresh or chilled vegetables n.e.s. (HS 070999) which took 97% of HS 0709 total exports;
    5. Mixtures of vegetables (HS 071090) which took 85% of HS 0710 total exports;
    6. Dried shelled peas (HS 071310) which took 26% of HS0713 total exports;
    7. Dried, shelled kidney beans (HS 071333) which took 22% of HS 0713 total exports;
    8. Dried shelled beans (HS 071331) which took 16% of HS 0713 total exports; and
    9. Dried shelled leguminous vegetables (HS 071390) which took 21% of HS 0713 total exports.
5. A breakdown of HS 08 Chapter shows that avocados and mangoes are categorised under product group HS 0804 which is described as "Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried". This product group contributed US$ 752.2 million or 62% of Kenya's total fruits exports (Chapter 08) during the period 2018-2022 as shown in Annex 6.

21. Export trade statistics are sourced from the International Trade Centre statistics (www.intracen.org)

22. The Harmonized System is a standardized international numerical method of classifying traded products. It is used by customs authorities around the world to identify products when assessing duties and taxes and for gathering statistics. It allows participating countries to classify traded goods on a common basis for customs purposes.

6. Further breakdown of the fruits grouping into specific fruits categories at the HS 6-digit level summarised in table 4 below shows that:

   1. Avocados exports (HS 080440) amounted to US$ 606.02 million or 81%% of exports of HS 0804 product group during the period 2018-2022
   2. Mangoes exports (HS 080450) amounted to US$ 90 million or 12% of total fruits exports of HS 0804 during the period 2018-2022.

Table 2: Kenyan vegetables exports at HS 4-digit level between 2018 and 2022 (US$ '000)

HS CODE	PRODUCT GROUP DESCRIPTION	2018	2019	2020	2021	2022	TOTAL 2018-22	SHARE (%) OF TOTAL GROUP EXPORTS 2018-2022
0708	Leguminous vegetables, shelled or unshelled, fresh or chilled	65,663	81,638	62,025	77,048	72,430	358,804	28%
0709	Other vegetables, fresh or chilled (excl. potatoes, tomatoes, & alliaceous vegetables)	78,492	58,678	81,031	86,239	47,716	352,156	27%
0710	Vegetables, uncooked or cooked by steaming or boiling in water, frozen	49,676	53,591	62,116	36,742	42,181	244,306	19%
0713	Dried leguminous vegetables, shelled, whether or not skinned or split	39,191	11,309	76,220	75,210	30,848	232,778	18%
All other products between HS 0701 and 0713		17,063	19,430	14,045	27,144	22,276	99,958	8%
Total Vegetables Exports		**250,085**	**224,646**	**295,437**	**302,383**	**215,451**	**1,288,002**	**100%**

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

Table 3: Kenyan fruits exports at HS 4-digit level between 2018 and 2022 (US$ '000)

HS CODE	PRODUCT GROUP DESCRIPTION	2018	2019	2020	2021	2022	TOTAL 2018-2022	SHARE (%) OF TOTAL GROUP EXPORTS 2018-2022
0804	Dates, figs, pineapples, avocados, guavas, mangoes and mangosteens, fresh or dried	138,993	125,873	145,151	175,286	166,899	752,202	62%
All other fruits under HS codes 0801 and 0814		93,524	78,553	71,181	107,046	112,383	462,687	38%
Total Fruits Exports		**232,517**	**204,426**	**216,332**	**282,332**	**279,282**	**1,214,889**	**100%**

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

Table 4: Total exports and export market share (%) of prioritised fresh vegetables' exports (HS 6-digit level) in their product group (HS 4-digit level) during the period 2018-2022

HS CODE	PRODUCT DESCRIPTION	2018	2019	2020	2021	2022	TOTAL 2018-22	EXPORT SHARE (%) IN PRODUCT GROUP 2018-22
070820	Fresh or chilled beans, shelled or unshelled	41,435	47,479	35,809	46,263	42,148	213,134	59% (in HS 0708)
070890	Fresh or chilled leguminous vegetables, shelled or unshelled	17,141	27,855	20,659	18,565	17,746	101,966	28% (in HS 0708)
070810	Fresh or chilled peas, shelled or unshelled	7,086	6,304	5,556	12,221	12,536	43,703	12% (in HS 0708)
070999	Fresh or chilled vegetables n.e.s.	76,963	56,782	78,069	83,691	45,960	341,465	97% (in HS 0709)
071090	Mixtures of vegetables	42,099	45,127	55,661	30,193	35,497	208,577	85% (in HS 0710)
071310	Dried shelled peas	3,411	3,273	30,198	9,953	14,321	61,156	26% (in HS 0713)
071333	Dried, shelled kidney beans	11,228	3,526	8,406	21,245	7,118	51,523	22% (in HS 0713)
071331	Dried shelled beans	7,271	358	6,583	18,404	4,709	37,325	16% (in HS0713)
071390	Dried shelled leguminous vegetables	12,585	357	17,223	14,621	3,624	48,410	21% (in HS 0713)
080440	Fresh or dried avocados	118,289	102,397	116,255	140,123	128,955	606,019	81% (in HS 0804)
080450	Fresh or dried guavas and mangoes	20,292	16,185	13,941	18,653	20,865	89,936	12% (in HS 0804)

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

2.2 Export Performance of the Prioritised Vegetables & Fruits

2.2.1 Vegetables Export Shares

As shown in Annex 4, total exports of the nine (9) priority vegetables (table 4) amounted to US$ 1.2 billion or 86% of total vegetables exports during the period 2018-2022. Analysis of individual vegetable product categories shows that:

1. Fresh or chilled vegetables n.e.s. (HS 070999) topped list, taking US$ 341.5 million or 27% of total vegetable exports during the period 2018-202.
2. Fresh or chilled beans (HS 070820) took US$ 213.13 Million or 17% of total vegetables exports during the period of analysis
3. Mixed vegetables (HS 071090) took 208,577 or 16%
4. Fresh or chilled leguminous vegetables (HS 070890) took 102 Million or 8%
5. Dried shelled peas (HS 071310) took 61,156 or 5%
6. Dried shelled kidney beans (HS 071333) took 51,523 or 4%
7. Dried shelled leguminous vegetables (HS 071390) took 48,410 or 4%
8. Fresh or chilled peas (HS 070810) 43.7 Million or 3%
9. Dried shelled beans HS 071331) took 37,325 or 3%

2.2.2 Vegetables Export Growth

As shown in Annex 5, vegetables exports declined by from US$ 219.22 million in 2018 to US$ 183.7 million or by 16% over the period of analysis. However, analysis of export growth for individual vegetable categories shows mixed trends over the period 2018-2022 as summarised below:

1. Exports of dried shelled peas (HS 071310) demonstrated impressive export growth of 320%, growing from US$ 3.41 million in 2018 to US$ 14.32 million in 2022.
2. Exports of fresh or chilled peas (HS 070810) grew by 77% from US$ 7.1 million in 2018 to 12.54 million in 2022
3. Exports of fresh or chilled leguminous vegetables (HS 070890) grew by 4% from US$ 17.14 million in 2018 to US$ 17.75 million in 2022
4. Exports of fresh or chilled beans (HS 070820) grew by 2% from US$ 213.13 million in 2018 to US$ 42.15 million in 2022
5. Exports of fried shelled leguminous vegetables (HS 071390) recorded an overall high decline of 71% from US$ 12.6 million in 2018 to US$ 3.6 million in 2022.
6. Exports of fresh or chilled vegetables n.e.s. (HS 070999) declined by an overall 40% from US$ 77 million in 2018 to US$ 46 million in 2022
7. Exports of dried shelled kidney beans (HS 071333) declined by 37% from US$ 11.3 million in 2018 to US$ 7.12 million in 2022
8. Exports of dried shelled beans HS 071331) declined by 35% from US$ 7.27 million in 2028 to US$ 4.7 million in 2022
9. Exports of mixed vegetables (HS 071090) declined by 16% from US$ 42.1 million in 2018 to US 35.5 million in 2022.

2.2.3 Fruits Export Shares

As shown in Annex 6, total fruits exports amounted to US$ 1.2 million during the period 2018-2022. Analysis of exports by individual fruits groupings shows that:

1. Exports of avocados (HS 080440) amounted to US$ 606.02 million or a high 50% of total fruits exported during the period 2018-2022.
2. Exports of mangoes e (HS 080450) amounted to US$ 90 million or 7% of total fruits exported during the period 2018-2022. Although mangoes are categorised together with guavas at the HS 6-digit level HS 080450, the total exports captured under this tariff number entirely comprises mangoes since Kenya hardly exports any guavas.
3. Exports of all other fruit categories (such as bananas, pineapples, citrus fruits, melons, nuts etc.) amounted to US$ 518 million or 43% of total fruits exports.

2.2.4 Fruits Export Growth

As shown in Annex 7, the total fruits exports grew by an average 20% from US$ 232.5 million to US$ 279.3 million during the period 2018-2022. Analysis of export growth by individual fruits groupings shows that:

1. i)Exports of avocados grew by 9% during the period 2018-2022, from US$ 118.3 million in 2018 to US$ 129 million in 2022
2. ii)Exports of mangoes grew by 3% during the period 2018-2022, from US$ 20.3 million in 2018 to US$ 21 million in 2022
3. iii)Exports of all other fruits grew by 38% during the period 2018-2022, from US$ 94 million in 2018 to US$ 129.5 million in 2022

2.3 Kenya Export trade Performance for The Priority Vegetables & Fruits in Lead Export Markets

2.3.1 Export performance in lead export markets

As detailed in Annex 8, analysis of the export performance of prioritised vegetables and fruits in Kenya's lead markets shows that:

1. Total Kenyan exports of fresh or chilled beans (HS 07082) to the world grew by only 2% from US$ 41.44 million in 2018 to US$ 42.15 million in 2022. Three lead markets took the bulk (82%) of exports of this product during the period 2018; namely France which took 30%, followed by United Kingdom at 31%, and Netherlands at 21%. All other export markets took 17% of the combined exports during the analysis period. Exports to France grew by 16% from US$ 12.2 million in 2028 to US$ 14.1 million in 2022, while exports to the United Kingdom grew by 4% from US$ 11.6 in 2028 to US$ 12.1 million in 2022. Exports to Netherlands however declined by 11% from US$ 10.33 million in 2018 to US$ 9.14 million in 2022. Exports to all other export markets also declined from US$ 7.32 million in 2018 to US$ 6.9 million in 2022.
2. Total exports of Fresh or chilled leguminous vegetables (HS 070890) to the world grew by 4% from US$ 17.15 million in 2018 to US$ 17.8 million in 2022. Two lead export markets took 77% of exports of this product during the analysis period, namely the United Kingdom which took 51%, and Netherlands which took 26%. Although the United Kingdom ended up as the dominant export market, total exports to this market declined by 30% from US$ 9.56 million in 2018 to US$ 6.7 million in 2022. On the other hand, exports to Netherlands grew by a miserable 1% from US$ 4.5 million in 2018 to US$ 4.51 million in 2022.
3. Total exports of fresh or chilled peas (HS 070810) to the world grew by a high 77% from US$ 7.1 million in 2018 to US$ 12.53 million in 2022. Three lead markets took the bulk of exports of this product during the period of analysis, namely United Kingdom which took 24%, Netherlands (32%), and France (15%). Exports to the United Kingdom grew substantially by 467% from US$ 0.7 million in 2018 to US$ 10.4 million in 2022. Exports to Netherlands grew minimally by 4% from US$ 2.86 million in 2018 to US$ 3 million in 2022; while exports to France grew by a high 80% from US$ 1.1 million in 2018 to US$ 3.6 million in 2022.
4. Total exports of fresh or chilled vegetables n.e.s. (HS 070999) fell by a notable 40% from US$ 77 million in 2018 to US$ 50 million in 2022. There was only one lead market for this product during the period of analysis; namely United Kingdom which took 76% of total exports; while all other export markets took only 24%. Exports to United Kingdom declined from US$ 52.21 million in 2018 to US$ 36 million in 2022, while exports to all other markets also declined by 60% from US$ 24.8 million in 2018 to 10 million in 2022.
5. Total exports of mixed vegetables (HS 071090) fell by 16% from US% 42.1 million in 2018 to US$ 35.5 million in 2022. Two lead markets took the bulk (81%) of exports during the analysis period; namely United Kingdom which took 64%, and Netherlands which took 17%. Exports to United Kingdom however declined by 41% from US$ 333 million in 2018 to US$ 19.43 million in 2022; while exports to Netherlands increased by 23% from US$ 5.32 million in 2018 to US$ 6.52 million in 2022.
6. Total exports of Dried shelled peas (HS 071310) increased by a substantial 320% from US$ 3.4 million in 2018 to US$ 14.32 million in 2022. Two lead markets took the bulk or 76% of exports of this product during the period 2018-2022; namely Uganda, which took 41% and South Sudan which took 33%. Total exports to Uganda increased from US$ 0.16 million in 2018 to 3.1 million in 2022, while total exports to South Sudan increased from US $ 1.1 million in 2018 to US$ 4.8 million in 2022.
7. Total exports of Dried shelled kidney beans (HS 071333) fell by a notable 50% from US$ 20.74 million in 2018 to US$ 10.4 million in 2022. There were two lead export markets for this product during the period 2018-2022, namely India which took 27% and Pakistan which took 23%. Exports to India increased by 77% from US$ 2.23 million in 2018 to US$ 4 million in 2022, while exports to Pakistan fell by a high 85% from US$ 8.14 million in 2018 to US$ 1.24 million in 2022.
8. Total exports of dried shelled beans (HS 071331) declined by 35% from US$ 7.27 million in 2018 to US$ 4.71 million in 2022. There were three lead export markets for this product over the period 2018-2022; namely India which took 41%, United Arab Emirates which took 22%, and Vietnam which took 16%. Exports to India declined by a notable

69% from US$ 2.84 million in 2018 to US$ 0.88 million in 2022, while exports to UAE declined by a high 98% from US$ 3.1 million in 2018 to US$ 0.71 million in 2022. On the other hand, exports to Vietnam increased substantially by a high 626% from US$ 0.45 million in 2018 to US$ 3.23 million in 2022.

9. Total exports of dried, shelled leguminous vegetables (HS 071390) (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas) fell by a high 71% from US$ 12.6 million in 2018 to US$ 3.6 million in 2022. There were four lead export markets for this product over the period 2018-2022; namely:

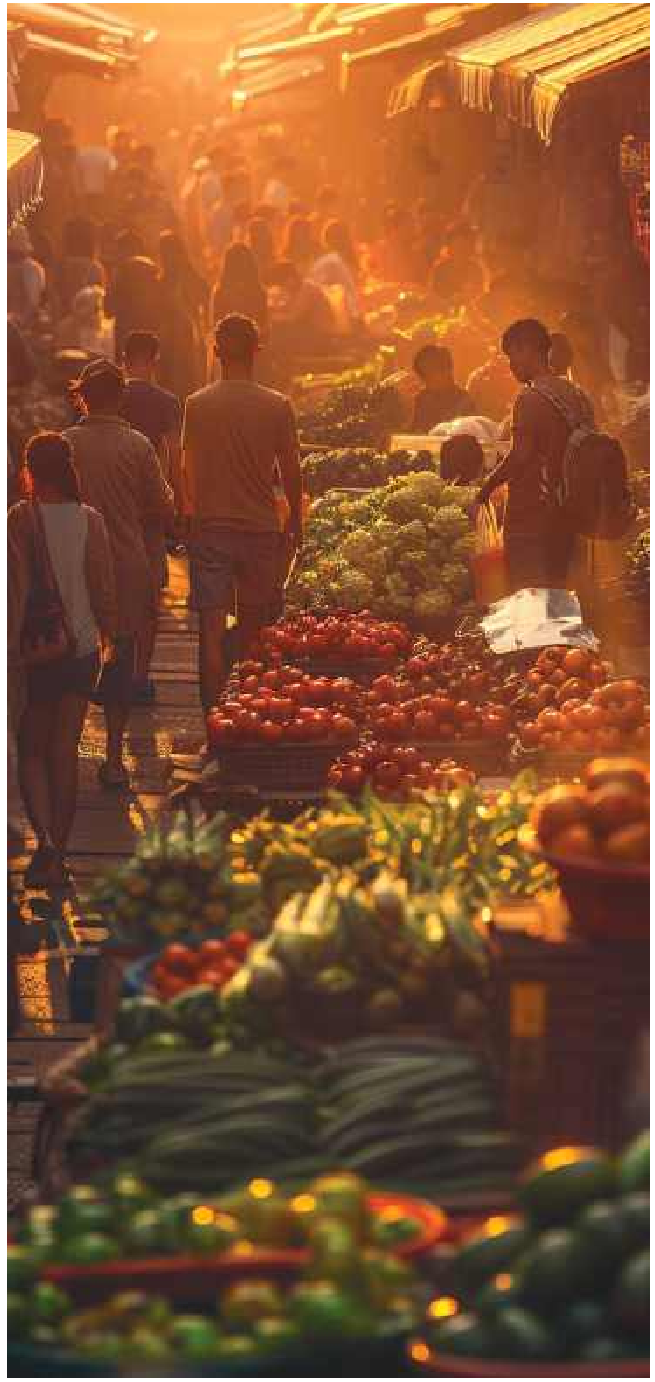
    - India which took 53%, UAE which took 17%, Vietnam which took 13% and Pakistan which took 10%.
    - Exports to India were erratic, falling by a high 100% from US$ 8.16 million in 2018 to an absolute US$ 0 in 2019, thereby increasing to US$ 6.47 million in 2020 and further to US$ 11.2 million in 2021 before falling again to an absolute US$ 0 in 2022. Exports to UAE also fell by a high 100% from US$ 1.8 million in 2018 to an absolute US$ 0 in 2022. Exports to Vietnam increased by 20% from US$ 1.84 million in 2018 to US$ 2.2 million in 2022; while exports to Pakistan were also erratic like in the case of India and UEA, since there were no exports in 2018, while in 2019 the country took US$ 0.27, which increased to US$ 4.16 million in 2020 and then fell to US$ 0.74 million in 2021 and to an absolute US$ 0 in 2022.

10. Total exports of fresh or dried avocados (HS 080440) increased by 9% from US$ 118.3 million in 2018 to US$ 129 million in 2022. Five countries emerged as the lead export markets for the product during the period 2018-2022; namely:

    - Netherlands, which took 28% of total exports during the analysis period. However, exports to this market declined by 14% from US$ 42.56 million in 2018 to US$ 36.8 million in 2022
    - UAE, which took 15% to total exports, which increased by 21% from US$ 16.7 million in 2018 to US$ 20 .13 million in 2022
    - France, which took 14% of total exports; increasing by 29% from US$ 14.46 million in 2018 to US$ 18.6 million in 2022
    - Spain, which took 10% of total exports; which however increased by only 3% from US$ 10.5 million in 2018 to US$ 10.83 million in 2022
    - Saudi Arabia, which took 6% of total exports; which increased by 22% from US$ 7.12 million in 2018 to US$ 8.7 million in 2022.

11. Total exports of fresh or dried mangoes (HS 080450) increased by a mere 3% during the period 2018-2022, from US$ 20.3 million in 2018 to US$ 21 million in 2022. There were three lead export markets for this product during the analysis period, namely:

    - UAE, which took 45% of total exports, which however declined by 17% from US$ 10.27 million in 2018 to US$ 8.47 million in 2022
    - Saudi Arabia, which took 16% of total exports, which however declined by 42% from US$ 4.17 million in 2018 to US$ 2.4 million in 2022
    - Oman, which took 11% of total exports, which grew by 14% from US$ 3.8 million in 2018 to US$ 7.63 million in 2022



2.3.2 Imports of the priority vegetables and fruits from the lead export markets

As shown in Annex 9, Kenya imports very little amounts of the prioritized vegetables and fruits from her lead export markets. Only some small values of dried shelled leguminous vegetables (HS 071390) were imported from India amounting to a total of US$ 0.2 million during the period 2018-2022.

2.3.3 Kenyan trade balance for vegetables and fruits in the lead export markets

Kenya recorded a trade surplus in all her lead export markets for all prioritised vegetable categories, avocados and mangoes and also at the world level during the period 2018-2022 as detailed in Annex 10. In this regard:

1. Total vegetables exports amounted to US$ 1.14 billion while imports amounted to US$ 0.204 million; thereby recording a trade surplus worth US$ 932.7 billion
2. Total avocados exports amounted to US$ 606 million while imports amounted to US$ 0.512 million; thereby recording a trade surplus worth US$ 605.5 million
3. Total mangoes exports amounted to US$ 90 million while imports amounted to 1.18 million; thereby recording a trade surplus worth US$ 88.76 million during the period

2.3.4 Kenya's market potential for vegetables and fruits in the lead export markets

While it would have been desirable to analyse Kenya's production capacity for the prioritized vegetables and fruits as a basis of assessing unrealised export potential for these priority value chains, the assessment notes that it is not advisable to take this approach in determining Kenya's export potential in each lead market. This is because there are discrepancies between Kenya's production and export data for fresh produce. In this respect, production of vegetables and fruits (as recorded in the Kenya Economic Survey 2023) is lower than exports (as reported in the ITC trade maps website). The discrepancy arises because production of fresh produce is only recorded as the farm gate value of vegetables and fruits for export purposes but does not include production value for the domestic market.

A correct capture of the country's production capacity should have taken into account the value of production for exports as well as for exports. The failure to capture data on production for the domestic market is because the Kenya Central Bureau of Statistics (KNBS) does not generate its own statistics but depends on other authorities to provide such data (in this case farm gate value of vegetables and fruits is provided by the Horticultural Crops Directorate – HCD of AFA). KNBS thereafter publishes such data in both the annual economic survey and statistical abstracts. HCD on the other hand only captures the horticulture sector production data for exports (farm gate value), and therefore the capture of value of harvested production for domestic market is totally lost. In addition, even the before recording the value of harvested production intended for exports, there are substantial production losses due to insufficient and inefficient storage/warehousing facilities. Thereafter subsequent transport costs to exit ports and shipping and clearing and forwarding expenses are incurred, while profit margins for exporters have to be accounted for before arrival of a consignment at the entry ports of export markets[23].

These additional costs are not reflected in the production data at the farm gate although they are part of the final export data reported by ITC, hence the production and export data variances. In addition, it is to be noted that KNBS lumps production data for all vegetable categories and fruits together but does not provide disaggregated data for specific vegetable and fruit categories. This makes it difficult to analyse production capacity based on currently available production and export data for each distinct horticultural product. It would be advisable to conduct a separate detailed study on the production dynamics and related constraints which limit Kenya's potential to increase exports of vegetables and fruits rather than using production capacity to indicate the unrealised export potential.

23. It would be advisable to conduct a separate detailed study on the production dynamics and related constraints which limit Kenya's potential to increase exports of vegetables and fruits rather than making an attempt to indicate Kenya's production capacity and potential to increase exports, since production capacity is not clear based on current production data published by KNBS

The assessment has therefore computed Kenya's market potential for fresh vegetables and fruits in each lead market by analysing the difference between the total value of Kenya exports of fresh vegetables and fruits and the total value of similar products imported into each lead market from the world during the period 2018-2022. The difference between the two values indicates Kenya's unrealised market potential, assuming no other country competes in a given target export market. Kenya's market share for the prioritized products in each market has also been computed as a baseline to guide efforts to increase the market share. The analysis additionally indicates the other 10 major competing countries for each prioritized product in each lead market, which Kenya should take note of as she makes efforts to increase her market share. The analysis on market potential shows the scenario elaborated below.

1. **Kenya's market potential for vegetables (HS 07) in the lead export markets based on 2018-2022 data**

Analysis has been computed at the HS chapter level to enable a comprehensive capture of all vegetables exports without losing out any possible vegetable category. HS Chapter 07 is described as "Edible Vegetables, Certain Roots and Tubers". As shown in Annex 10, except for Uganda and South Sudan markets, Kenya takes a very small market share in her other lead export markets for fresh vegetables. The specific analysis of Kenya's market share and unrealised potential in each lead market during the period 2018-2022 is elaborated below.

1. French Market

Kenya exported US$ 177.3 million worth of fresh vegetables to France which translates to 1% market share. France imported a total of US$ 18.52 billion worth of fresh vegetables from the world during the period. Thus, Kenya's unrealised market potential in France amounting to US$ 18.34 billion. The other ten major competitors for the French market are Spain which took 35% of the market share, Morocco (19%), Belgium (12%), Netherlands (8%), Italy (5%), Poland (3%), China (2%), Germany (2%), France (1%), and Portugal (1%). Considering that 8 of the major competitors for the French vegetables' market are all EU member countries which have zero tariffs on goods traded amongst themselves, supported by efficient transportation and shorter distance to the French market, Kenya will have to work harder to increase her market share by prioritizing measures to increase farm level efficiency, and efficiency in delivery of trade logistical services to farmers and exporters.

2. United Kingdom Market

Kenya exported US$ 612.8 million worth of fresh vegetables to United Kingdom, which is 3% market share of the UK market. The UK on the other hand imported US$ 21.7 billion worth of fresh vegetables. Kenya's unrealised market potential in UK is therefore US$ 21.1 billion. Other 10 major competitors for the UK vegetables market were Spain (27%), Netherlands (20%), Belgium (6%), Poland (4%), Ireland (4%), Morocco (4%), France (3%), Italy (3%), Germany (3%), and China (2%). Thus, all other major competitors for the UK vegetables market except China are EU countries, which are favoured by efficient transportation and market proximity to the UK market.

3. Netherlands market

Kenya exported fresh vegetables worth US 183.27 million to Netherlands which translates to 1% market share of the Netherlands vegetables market. Netherlands in turn imported vegetables worth US$ 15 billion. Kenya's unrealised market potential in Netherlands is therefore US$ 14.75 million. Other 10 major competitors for the Netherlands market are Spain which took 25%, Belgium (17%), Germany (15%), France (7%), Italy (4%), Morocco (3%), USA (3%), Poland (3%), China (3%), and Egypt (2%).

4. Uganda Market

Kenya exported US 64.3 million worth of fresh vegetables to Uganda, thus taking a 47% market share. Uganda imported vegetables worth US$ 136.45 million during the period. Kenya's unrealised market potential in Uganda is therefore US$ 72.2 million. Other 10 major competitors for the Uganda vegetables market are Tanzania which took 41%, China (6%), UAE (1%), Canada (1%), Turkey (1%), Rwanda (0.5%), India (0.4%), Netherlands (0.4%), Brazil (0.4%), and South Africa (0.2%).

5. South Sudan market

Kenya exported US 28.37 million worth of fresh vegetables to South Sudan, taking a 21% market share of South Sudan market. South Sudan imported vegetables worth US$ 138.17 million during the period. Kenya's unrealised market potential in South Sudan is therefore US$ 109.8 million. Other 10 major competitors for the South Sudan vegetables market are Uganda which took 59%, UAE (15%), China (2%), Rwanda (1%), Tanzania (0.8%), Belgium (0.7%), Egypt (0.2%), Pakistan (0.2%), Netherlands (0.1%), and Canada (0.1%).

6. India Market

Kenya exported US 76.6 million worth of fresh vegetables to India, taking a 1% market share. India imported vegetables worth US$ 8.45 billion from the world during the period. Kenya's unrealised market potential in India is therefore US$ 8.37 billion. Other 10 major competitors for the India vegetables market are. Myanmar which took 28%, Canada (21%), Mozambique (11%), Tanzania (9%), Australia (6%), Brazil (4%), Sudan (3%), China (2%), Russia (2%), and Malawi (1%).

7. Pakistan Market

Kenya exported US 46 million worth of fresh vegetables to Pakistan during the period 2018-2022, taking a 1% share of Pakistan market for vegetables. Pakistan imported vegetables worth US$ 4.2 billion from the world during the period. Kenya's unrealised market potential in Pakistan is therefore US$ 4.15 billion. Other 10 major competitors for the Pakistan vegetables market are Australia which took 18% of the country's vegetables market, Afghanistan (16%), Russia (13%), Canada (12%), China (9%), USA (3%), Iran (3%), Tanzania (3%), Montenegro (3%), and Vietnam (3%).

8. United Arab Emirates Market

Kenya exported US 48 million worth of fresh vegetables to UAE, taking 1% share of UAE market for vegetables. UAE imported vegetables worth US$ 5.42 billion from the world during the period. Kenya's unrealised market potential in UAE is therefore US$ 5.37 billion. Other 10 major competitors for the UAE vegetables market are Canada 15% India (14%), Australia (9%), China (8%), Iran (5%), Egypt (5%), Spain (4%), Pakistan (3%), Netherlands (3%), and Jordan (3%).

9. Vietnam Market

Kenya exported US 0.97 million worth of fresh vegetables to Vietnam, taking 0.02% market share of Vietnam market for vegetables. Vietnam, imported vegetables worth US$ 4.8 billion from the world during the period. Kenya's unrealised market potential in Vietnam is therefore US$ 4.8 billion. Other 10 major competitors for the Vietnam vegetables market are Cambodia (45%), China (36%), Myanmar (8%), Lao (4%), Australia (2%), India (2%), UAE (1%), Thailand (0.5%), South Korea (0.4%), and Argentina (03%).

2. Kenya's market potential for avocados (HS 080440) in lead export markets based on 2018-2022 data

As shown in Annex 12, Kenya takes a very small share of the avocados export market in all her lead export markets, except in Saudi Arabia and UAE in which she took 47% and 37% market.

1. Netherlands Market

Kenya exported avocados worth US 269.72 million to Netherlands which was 6% market share. Netherlands in turn imported avocados worth US$ 4.32 billion. Kenya's unrealised market potential in Netherlands is therefore US$ 4.05 billion. Other 10 major competitors for the Netherlands avocados market are Peru which took 32%, Chile (13%), Colombia (11%), South Africa (9%), Spain (7%), Mexico (6%), Israel (4%), Germany (2%), Belgium (2%), and Morocco (2%).

2. United Arab Emirates Market

Kenya exported US$ 89.8 million worth of avocados to UAE, and emerged as the top exporter of this product to UAE taking 37% of the market share. UAE in turn imported US$ 242.64 million of avocados. Kenya's unrealised export potential for UAE avocados market amounted to US$ 152.84 million. Other 10 major exporters of avocados to UAE were Mexico which took 28%, Peru (7%), USA (5%), Rwanda (4%), Chile (4%), South Africa (3%), Tanzania (3%), Colombia (3%), Uganda (2%), and Spain (1%).

3. French Market

3)Kenya exported US$ 148.04 million worth of avocados to France, which was 6% of the French market. France imported US$ 2.52 billion worth of avocados during the period. Kenya's unrealised export potential for France avocados market amounted to US$ 2.37 billion. Other 10 major exporters of avocados to France were Spain which took 28%, Peru (23%), Israel (11%), Mexico (8%), Morocco (6%), Chile (5%), South Africa (4%), Colombia (3%), Dominican Republic (2%), and Tanzania (1%).

4. Spanish Market

Kenya exported US$ 76 million worth of avocados to Spain, which was 4% of the Spanish market. Spain on the other hand imported US$ 1.91 billion worth of avocados. Kenya's unrealised export potential for the Spanish avocados market amounted to US$ 1.83 billion. Other 10 major exporters of avocados to France during the period were Peru which took 47% of the Spanish avocados market, Mexico (15%), Morocco (11%), Chile (6%), Colombia (5%), Netherlands (4%), Portugal (3%), Brazil (2%), South Africa (1%), and France (1%).

5. Saudi Arabia Market

Kenya exported US$ 61.23 million worth of avocados to Saudi Arabia, and emerged as the top exporter, taking 47% of the Saudi Arabia market for the product. Saudi Arabia in turn imported US$ 131.1 million worth of avocados Kenya's unrealised export potential for the Saudi Arabia avocados market amounted to US$ 169.81 million. Other 10 major exporters of avocados to Saudi Arabia during the period were Mexico which took 12% of the avocados market, Spain (8%), South Africa (7%), USA (5%), Netherlands (4%), Uganda (3%), Chile (3%), Colombia (2%), Peru (2%), and Lebanon (1%).

3. Kenya's market potential for mangoes (HS 080450) in the lead export markets based on 2018-2022 data

As shown in Annex 13, Kenya takes a very small share of the mangoes market in the three countries that emerge as her lead export markets for the product during the period 2018-2022. The specific analysis of market shares and unrealised potential in each lead market is elaborated below.

1. United Arab Emirates Market

Kenya exported US$ 38.27 million worth of mangoes to, which translates to a 9% market share of the UAE market. UAE on the other hand imported US$ 449.54 million worth of mangoes. Kenya's unrealised export potential for the UAE mangoes market amounted to US$ 411.27 million. Other 10 major exporters of mangoes to UAE were India which took 27% market share, Pakistan (26%), Egypt (7%), Thailand (6%), Vietnam 6%), Australia (4%), Yemen (3%), South Africa (3%), Indonesia (3%), and Peru (1%).

2. Saudi Arabia Market

Kenya exported US$ 19.76 million worth of mangoes to Saudi Arabia, which translates to a 7% market share of the UAE market. Saudi Arabia on the other hand imported US$ 292 million worth of mangoes. Kenya's unrealised export potential for the Saudi Arabia mangoes market amounted to US$ 272 million. Other 10 major exporters of mangoes to Saudi Arabia were Egypt which took 35% market share, Yemen (25%), Pakistan (17%), India (7%), South Africa (2%), Thailand (1%), Australia (1%), Bangladesh (0.7%), Sri Lanka (0.5%), and Peru (0.6%).

3. Oman Market

Kenya exported US$ 7.8 million worth of mangoes to Oman, which translates to a 5% market share of the Oman market. Oman on the other hand imported US$ 166 million worth of mangoes. Kenya's unrealised export potential for the Oman mangoes market amounted to US$ 158.5 million. Other 10 major competitors for the Oman mangoes market were: Yemen which took 26% of the mangoes market, Pakistan (25%), UAE (15%), Egypt (12%), India (12%), Qatar (1%), Thailand (1%), Indonesia (0.6%), Sri Lanka (0.4%), and Vietnam (0.4%).

2.4 Assessment of Kenya's Lead Export Markets for Fresh Vegetables & Fruits

2.4.1 Overall Requirements for Exporting from Kenya

Generally, exporters of horticultural produce (fresh fruits, vegetables, plants and flowers) must comply with the Government of Kenya (GOK) procedural requirements, including (i) Registration as an exporter through the Agriculture and Food Authority's (AFA) Integrated Management Information System[24] ; (ii) Issuance of an export certificate by the AFA HCD to indicate that the consignment has been cleared for export, and that the produce has been sourced from registered growers or registered growers' associations; (iii) Issuance of a phytosanitary certificate by the Kenya Plant Health Inspectorate Service (KEPHIS) for each export consignment, which aims to certify that plants and plant products are free from regulated pests and conform to phytosanitary requirements of the importing country. KEPHIS is additionally mandated by law to conduct seed certification and assure that fresh produce is safe for human and animal consumption, and is also not harmful to the environment, which is the basis for issuing the phytosanitary certificate to exporters. After complying with these GOK requirements, exports of vegetables and fruits from Kenya must proof compliance with the import entry requirements of the target market before they can be allowed exit from Kenya. The respective compliances include:

1. A farm inspection report issued by the AFA[25] Horticultural Crops Directorate (HCD)
2. A pack-house inspection report, which includes the pack-house inspection checklist and traceability procedures applied; all issued by the AFA HCD
3. An export license issued by the Agricultural Food Authority (AFA) Horticultural Crops Directorate (HCD) to exporters of horticultural produce (fresh fruits, vegetables, plants, and flowers) as an indication that AFA HCD has cleared the consignment for export.
4. Phytosanitary and conformity certificate, issued by the Kenya Plant Health Inspectorate Service (KEPHIS), aimed to proof compliance with MRL[26] limits specified in the export destination markets. The phytosanitary certificate certifies that plant and plant products are free from regulated pests and conform to the importing country's phytosanitary requirements. No export consignment is allowed to leave the country without a Phytosanitary certificate.
5. An export health certificate, which is required for all export commodities intended for human consumption. Issuance of the certificate is regulated by Port Health Services and is required for each export consignment.
6. Customs Release Report/Clearance, which is issued by KRA indicating goods which have been under Customs control have been released for export (also referred to as a Customs Delivery Note -CDN). The Unique Consignment Document containing details of the exporter, importer and the contents of consignment accompanies the Customs Delivery Note. A Packing List also accompanies the CDN specifying the content of goods are in each consignment.
7. Airway Bill, which is prepared on behalf of a shipper to signify the contract between the shipper and aircraft operator(s) for the carriage of goods. The Airway bill is issued directly by the airline or through a freight forwarder.
8. Invoice: which is required by Customs in the importing country for purpose of levying applicable import duty; and in which an exporter states the price (e.g. transaction price or price of identical goods). The invoice also specifies the cost for freight, insurance, and packing, as well as terms of delivery and payment; used for the purpose of determining the Customs value of goods to calculate the total duty to be levied.
9. Euro 1 Movement certificate (for exports to EU), issued per consignment by the KRA Customs Directorate to proof goods have not undergone any further transformation after leaving Kenya exit ports until they arrive in the EU entry port.
10. Global GAP Certification for exports to EU countries[27], and the BRC certification[28], required by UK supermarkets.

24. AFA is mandated to regulate all scheduled food crops, legume crops, root crops and tuber crops which are broadly categorized into: cereals, legumes and roots, and tubers. Exporters of food crops are therefore required to obtain a certificate of registration from AFA in order to export such scheduled crops.
25. Agricultural Food Authority
26. Maximum Residue Level of pesticides used to control pests and plant diseases
27. Global GAP in Kenya is issued by SGS to proof compliance with internationally recognized Good Agricultural Practices (GAP), which refers to internationally recognized set of farm standards intended to eliminate the outbreak of plant and animal diseases. Although the standard is considered as voluntary, it becomes a mandatory requirement for exports of fresh produce to the EU markets, as farmers from whom exporters source their products are certified after proof that they meet the GAP standards in order to assure Europe supermarkets/distributors that the produce is of high quality and therefore safe to consume.

In addition, each exporter consignment must comply with the specific Certificate of Origin (COO) applicable for each given target market; aimed to certify that the product being exported is wholly manufactured, produced, processed, or obtained from the exporting country. The COO appears in two parts; the preferential and non - preferential COO, each of which is issued per consignment. The preferential COO is issued by the Kenya Revenue Authority (KRA) for exports where trade agreements have been entered into between Kenya and trading partners, such as the EU, EAC, COMESA, and the US under the African Growth & Opportunities Act (AGOA). The non-preferential COO is issued by the Kenya National Chamber of Commerce and Industry (KNCCI) for exports to countries where Kenya does not have preferential trade agreements such as Asian countries to confirm Kenya as the country of origin for goods being exported; or by the KRA for exports to African countries under the AfCFTA framework. The non-preferential COO is also applicable for countries that apply the Generalised System of Preferences (GSP), where Kenya exports (as well as exports from other developing countries) are given preferential tariff rates even though a trade agreement with the importing does not exist, such as European countries which do not belong to the EU (for example Switzerland). In summary, Kenya applies five (5) categories of COO, namely:

1. The European Union (EU) certificate of origin for goods obtained, manufactured, produced or processed in Kenya (or EAC).
2. The COMESA certificate of origin is required for goods obtained, manufactured, produced, or processed in Kenya, and exported within the Common Market for Eastern and Southern Africa (COMESA) region. The certificate is issued per consignment.
3. The EAC certificate of origin is required for goods obtained, manufactured, produced or processed in Kenya, and exported within the EAC region. The certificate is issued per consignment.
4. An ordinary/non-preferential certificate of origin for countries where Kenya has not entered into a trade agreement (such as the Asian lead export markets for vegetables and fruits); is issued by the Kenya National Chamber of Commerce and Industry (KNCCI) to confirm Kenya as the country of origin of goods being exported. For the AfCFTA, the certificate of origin is issued by the KRA (Rules of Origin Section).
5. The GSP COO for countries where Kenya exports are given preferential tariff rates even though a trade agreement with the importing does not exist (for example Switzerland)

Most exporters have built the required capacity to comply with all the GOK export regulations, and in this regard, designated GOK agencies provide extension services to farmers and exporters on specific-market entry requirements, including any new regulations which may be introduced by the importing countries (notably EU, UK and Asian countries). The relevant GOK agencies include KEPHIS, Horticulture Crops Directorate (HCD) and PCPB). Exporters also complement the GOK services by periodically sending their auditors to educate farmers on targeted market entry regulations. Most of the large exporters have additionally laid out elaborate quality management systems (QMS) and are certified by various food safety and quality standards organisations including Global Standard for Food Safety (BRCGS), Tesco Food Standard, Marks and Spencer Food Safety and integrity standards. They use the QMS to train farmers on farming methods, harvesting, packaging, sorting, washing (dipping in water), waxing and drying of produce as part of good agricultural practices that must be adhered to as the basis of procuring fresh produce from farms. They additionally apply pest and disease control measures in their own farms and/or advice farmers on such methods; which include:

- Use of cultural methods such as crop rotation to control pests
- Use of certified seeds and measures to ensure field hygiene
- Use of bio pesticides and other natural predators
- Use of conventional plant protection products
- Use of pest free farming areas for fresh produce production
- Investment in greenhouses for some vegetables like capsicums

28. The British Retail Consortium (BRC) Global is an independent food safety accreditation which is recognised by supermarkets and large organisations in the UK as proof that high food safety standards have been applied and that therefore the food company exporting the products in question is safe to source from.

Additionally, exporters conduct physical inspections in farms when produce is grown on contract to ensure such practices are strictly followed, and additionally support farmers by providing technical information on use of bio-control methods for trapping pests, such as use of pest traps. After procuring produce, the exporters thereafter store the produce in their cold rooms until they are ready to deliver to the exit port (either JKIA or Mombasa port).

During transportation to the exit port, exporters ensure they maintain the required temperatures (such as 5 degrees Celsius for avocado, 7 degrees Celsius for mangoes, and 9 degrees Celsius for pineapples). Additionally, exporters keep themselves abreast of newly introduced regulations and customer specific standards in target export markets (such as Tesco Food standard and Waitrose technical standard) by regularly communicating with their export customers, market brokers, and certification bodies (like Global GAP). They also get regular updates from GOK regulatory agencies regarding changes in technical regulations required in Kenya and in export markets

In addition, exporters enrol themselves into business membership organisations (such as the Fresh Produce Exporters Association of Kenya (FPEAK), the Fresh Produce Consortium of Kenya (FPCK), and Avocado Society of Kenya (ASK), so as to access timely export market information. The FCPK for example has established networks with 56 Kenya foreign diplomatic missions, which regularly provide information to the organisation on any changes in requirements for importation of goods in their hosting countries, thus enabling FCPK to issue weekly market intelligence updates to members on export market trends. In addition, the organisation participates in regional and international forums where SPS negotiations are conducted in order to create linkages with other fresh produce value chain players including banks and agrochemical companies. This is an essential service in facilitating members access useful information on regulations applied in export markets and changes in the export environment. Exporters additionally encourage farmers who produce on contract to enrol into fresh producer groups to share experiences in fresh produce farming. These efforts aim to enhance capacity for joint lobbying for appropriate services from GOK agencies in order to facilitate production of high-quality produce; in addition to providing a platform of engagements with relevant horticulture industry stakeholders. They however still face bottlenecks in accessing timely information on standards and regulations required in export markets and in accessing necessary extension services from GOK agencies. Nevertheless, whenever relevant information is available on GAP and export market requirements, it is incorporated in the quality control procedures before renewing annual export certificates as required by HCD. Thus, most exporters can be perceived to have make good efforts to be export ready even before delivering to import markets.

Based on the knowledge of market-specific entry requirements, the exporters negotiate annual/ seasonal FOB[29] or CIF[30] prices with importers or their brokers in the target export markets; who mostly determine the final prices. Some of the large exporters win their export contracts to supply large supermarkets by tendering for annual supplies, particularly in the UK and EU. The prices negotiated are the basis of preparing annual or seasonal contracts/agreements, which specify prices depending on the nature and seasonality of the produce. Exporters thereafter prepare invoices after delivery of produce to importers. While producers and exporters also get support from GOK agencies on application of pesticides, compliance with MRLs at the farm level, modalities of implementing GAP requirements, and mandatory market entry requirements to enable completion of export transactions, there are weaknesses in the provision of extension services by the GOK regulatory agencies including:

1. Extension services offered by the Ministry of Agriculture (MOA) do not fully consider safety protocols to be observed by exporters especially in dealing with chemicals. The Ministry is considered as offering generic services on MRLs but not market-specific requirements and changing specifications, including information on pesticides which may have been withdrawn by certain markets. Nevertheless, the Ministry makes serious efforts to train farmers on how to set up traps to catch the male fruit flies as part of efforts to eradicate the pest to ensure exported mangoes are pest free. The Ministry also trains farmers on hot water treatment methods for eradication of fruit fly.

29. Freight on Board
30. Clearing, Forwarding and Freight

2. KEPHIS and PCPB surveillance missions on farms are conducted intermittently due to shortage of human resources. In addition, the costs of such surveillance visits are borne by exporters as KEPHIS and PCPB funding by GOK is insufficient to cover surveillance services on compliance with specified MRLs. The consequence funding gap is that pests often attack fresh produce but farmers are unable to control them on timely basis. The insufficient capacity of regulatory authorities to detect and eliminate pests thus adversely affects Kenya's ability to increase export of fresh produce to major markets such as EU, UK, Middle East and India.

The Kenya Bureau of Standards (KEBS) in 2004 developed the Kenya GAP[31] standard 1758 as a code of practice for the Kenya horticulture industry. The standard stipulates the hygienic and safety requirements during production, handling, and marketing of fresh produce (vegetables, fruits, herbs and spices, flowers and ornamentals). The standard applies to all horticultural stakeholders in the horticultural value chain, including breeders, propagators, producers, consolidators, traders, shippers and cargo handlers catering for the local, regional and international markets with the primary objectives of promoting good agricultural practices, safeguarding consumer's interests, fostering social welfare, conserving the environment, and encouraging compliance with applicable laws and regulations. If this standard was widely and efficiently applied by all the horticultural players, it would significantly contribute to resolving a lot of obstacles that end up as export market entry barriers. However, capacity building of the value chain actors on application of the standard are constrained by insufficient budget allocations to KEPHIS, PCPB and HCD to perform the following mandated responsibilities:

1. **KEPHIS:** Conducting Phyto-sanitary inspection of all plants products and regulated articles and certifying them for exports; conducting seed certification and assurance on fresh produce; ensuring safety and quality of imported fresh produce through sampled testing; and conducting soil testing for heavy metals; and conducting regular monitoring and surveillance missions on farms to assure the required GAPs are applied; particularly in controlling pests which attack fresh produce during the wet seasons. The organisation also receives any notifications from importing countries' regulatory bodies whenever fresh produce consignment are rejected or banned for not meeting specified market entry standards, and passes such notifications the concerned exporter/s for future corrective action.

2. **HCD:** Promoting fresh produce in export markets; providing technical and advisory services to horticulture farmers through its 26 regional offices in the fresh produce growing areas on implementation of GAP, and on pest and disease management. HCD also oversees implementation and compliance with horticultural industry regulations, including enforcing adherence to specified quality and safety standards in regard to production. It additionally advises farmers on handling, harvesting, and measures to meet certification of fresh produce for export, based on compliance with specific market requirements.

3. **PCPB**[32] Enforcing and monitoring importation, exportation, manufacture, labelling and sale of pest control products which are specified in law to ensure the safety of humans and the efficacy and quality of such products

A related weakness is that KEBS is not mandated to offer any services within the horticulture industry, even though it is the body that developed the Kenya GAP standard 1758. KEBS jurisdiction is limited to the enforcement of Kenyan standards for processed goods and enforcing such standard specifications on imported goods. The Kenya standards in this regard are developed by KEBS with participation of manufacturers or adopted from international standards such as ISO. KEBS is also involved in harmonization of regional standards through the EAC and COMESA/Tripartite frameworks, and harmonization of African continental standards under the AfCFTA framework and ARSO[33] . With regard to exports, KEBS can only offer services on packaging and labelling upon request either by exporters, importers or the importing countries but is not mandated to approve the packaging materials (cartoons and plastic crates) and labelling used for delivery of products to intended markets. KEBS is therefore not among GOK regulatory agencies participating in the Single Window System (KSWS) in approving exports and imports.

31. Good Agricultural Practices
32. Pest Control Products Board
33. African Organization for Standardisation

Under the KSWS, various government departments and agencies authorise and approve international trade transactions. Exporters of fresh produce (vegetables, fruits and flowers) are left on their own toe ensure they meet the packaging and labelling specifications of the import markets.; including the specifications of packaging materials, aesthetic presentation, package stability, and labelling requirements. While HCD plays a significant role in ensuring fresh produce exporters understand packaging and labelling standards requirements, the enforcement of such standards is not a Kenyan legal requirement. This affects the marketability of fresh produce in export markets due to poor stability and poor aesthetic presentation. Major importing countries have legal requirements on packaging and labelling used on fresh produce, which Kenyan exporters are unable to meet. KEBS is additionally unable to oversee efficient implementation of the Kenya GAP standard 1758. There may be need for KEBS to be mandated to sign MOUs with Kenya export jurisdictions for fresh produce, and to subsequently conduct tests and certification of packaging and labelling used for fresh produce exports.

Other supply-side related bottlenecks facing fresh produce exports include:

1. The National Trade Facilitation Committee established in response to the coming into force of the WTO Trade Facilitation Agreement is yet to be fully operationalized in order to comprehensively handle trade facilitation matters based on need. This affects ability to quickly resolve market entry constraints particularly in absence of trade agreements between Kenya and Asian lead markets. The National Trade Facilitation Committee therefore needs to be operationalized with the mandate to address trade related obstacles whenever they occur, negotiate trade deals with third parties with which Kenya does not have a bilateral trade agreement, facilitate opening of new markets, and consolidate existing markets. The committee could mirror the composition, structure, and functions of the High-Level Task Force which existed during negotiations for the EAC Customs Union Protocol, whose membership comprised all trade stakeholders including key MDAs[34] and private sector associations. As an example, such a dedicated committee could consolidate and articulate Kenya's position and trade interests in India, UAE, Pakistan, Saudi Arabia, Vietnam, and other emerging markets in the Asian Continent with which Kenya does not have bilateral agreements.
2. In the past, fresh produce exporters used to import avocados from Tanzania during Kenya's avocado off-season that runs between December and March. The fruit was re-exported to EU and other major consumer markets in Middle East. However, HCD has of late started to impose temporary bans on the export of avocados by sea (such as the one introduced in November 2023), to ensure that traders do not export immature fruits. The November 2023 temporary export ban by sea was informed by the results of a survey which indicated that some exporters were importing immature fruit from Tanzania and re-exporting to EU and other markets. All avocado varieties were affected by the ban on sea shipments (Hass, Pinkerton, Fuerte, and Jumbo). It is to be noted that the Kenya avocados export season runs between March and November every year, while the Tanzania harvest season runs between early December and end of March. This is the opportunity that Kenyan avocado exporters have previously seized to ensure uninterrupted annual exports of avocados. The consequence of the November 2023 temporary sea freight ban is that small scale exporters immediately lost their export clients to competitors from Peru and South Africa, some of whom may never be regained. The ban was also discriminatory as it did not affect air freight which is mostly utilized by large exporters who were able to continue with uninterrupted export business. The closure of the export season had serious immediate effects for Kenya small scale exporters of avocados, because it translated to 3 months of lost business as such exporters are unable to use the more expensive air freight. On average, the small-scale exporters ship 50 tons of avocados per week, which works to 600 tons of lost export business per company for the 3 months they

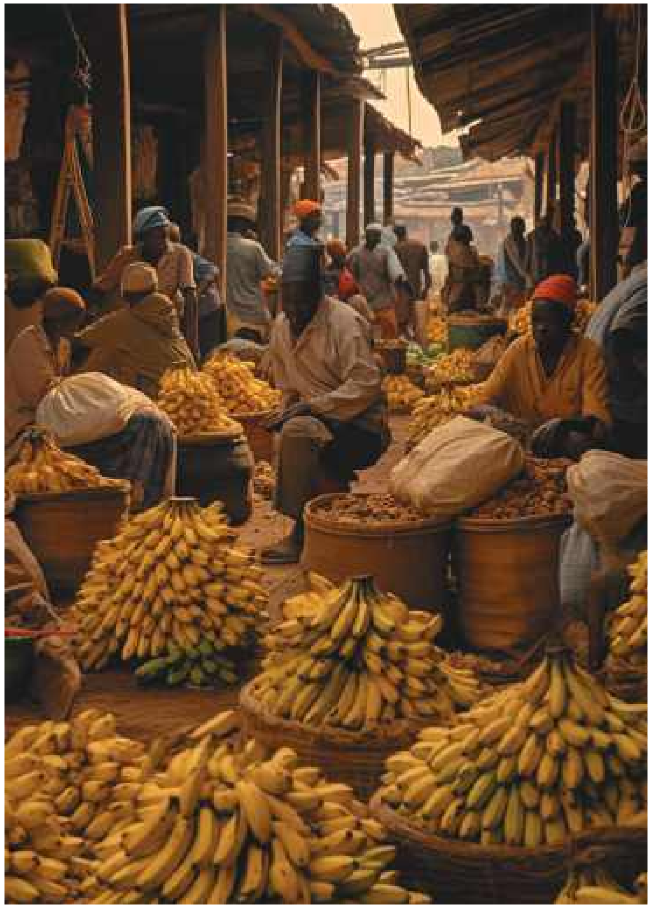
34.Government Ministries, Departments and agencies will be unable to operate until the Kenya harvest season opens in March 2024. For the estimated 290 Kenya SMEs involved in avocado export business, this translates to 174,000 tons of lost export business. Each ton on average generates Kshs 700,000-1million export revenue, which translates to lost export revenue of between Kshs 121.8 billion to Kshs 174 billion per annum for Kenya. During the temporary export ban period, the affected companies must continue absorbing operational costs (salaries, office expenses and other running costs such as transport for management staff). There is sufficient justification therefore for HCD to remove the temporary export ban on sea freight and use other measures to ensure traders do not export un-mature avocados.

3. Fresh produce exporters (particularly new entrants into fresh produce exports) are numerously approached by rogue conmen pretending to be genuine customers. Such conmen conduct due diligence on import market requirements and also offer more attractive prices than genuine customers; thus enticing SME exporters to fall prey to such deals and to incur huge monetary losses, after which the dishonest importers cut communication. It is necessary for GOK through HCD to offer advisory services to SME exporters by providing contacts of genuine importers and conducting due diligence in key export markets.
4. The multiplicity of certification requirements demanded in different export markets and stringent SPS measures (such as the requirement to produce in pest free areas), which requires massive investment in fresh produce farming thus limiting potential for increased exports. This is compounded by official controls in some import markets, including sampling of Kenyan beans at 10% in EU/UK entry ports during inspection to confirm MRL tolerance limits are met.
5. At COMESA level, harmonisation of seed regulations has been completed for maize, beans, rice, groundnuts, cotton, wheat, sunflower, sorghum, millet, cassava and Irish potatoes. This means except for Irish potatoes, other fresh products lack harmonised regulations for seed used for planting, translating into uncertified seed imports from the region, and consequent low yields for exports when such seeds are used by farmers.
6. The inability of producers/exporters to comply with specified market-entry standards/ regulations, due to insufficient technical knowhow on modern farming techniques, poor access to requisite export market information (such as standards and market entry requirements),and poor access to financial resources for investment in modern farming, storage/warehousing and export transactions. The producers and exporters should therefore be supported to improve their production processes, quality assurance systems, application of pesticides used to control pests, packaging and labelling standards, storage/ warehousing processes, and transportation facilities.
7. At the farm level, there is a serious challenge facing small scale farmers who deliver weekly supplies to exporters. This is because such farmers lack cold storage facilities to guarantee safe storage of perishable fresh produce until the date for their weekly deliveries. In addition, most small-scale exporters to whom such deliveries are made lack refrigerated trucks for safe collection of produce from farms and onward delivery to the airport (JKIA[35]) as such facilities are expensive. This problem is compounded by inability of small farmers and exporters to access financing from development banks to enable investment in cold storage facilities and refrigerated transport.
8. Meeting Global GAP and the EureGap (the offshoot of Global GAP) standards is very expensive for fresh produce farmers. In efforts to ensure farmers comply with GAP requirements prior to delivering fresh produce to JKIA for onward shipments to the destination markets, KEPHIS often conduct regular farm audits at the expense of producers. Compliant farmers are issued with Global GAP certification, thus assuring reliable deliveries to exporters. The cost of certification acts a direct deterrent to venturing into production of fresh produce for export markets.

35. Jomo Kenyatta International Airport, Nairobi

9. Exporters are concerned that avocadoes from Kenya are exported to Middle East via Netherlands, and therefore appear in Middle East supermarket shelves as Netherlands originating while the latter country is not known to produce avocadoes although it is the largest world exporter of the product. This implies there is a marketing gap in Kenya and that KEPROBA[36] which is responsible for promoting Kenyan originating products in export markets has failed in fulfilling its mandated role. Direct marketing of avocados from Kenya to Middle East markets would realise better profit margins for exporters as the distance to these markets is shorter (at an average 4-6 hours from Nairobi to Dubai for example), while the Middle East market as a whole is very huge as consumers have the necessary purchasing power as demonstrated by high per capita incomes (i.e. at US$ 53,758 in 2022 for UAE and US$ 30,436 in 2022 for Saudi Arabia). The Middle East market is also attractive for Kenya fresh produce since the said countries are desert and therefore entirely dependent on imported fresh produce.
10. The tropical climatic conditions in which Kenya fresh produce is grown makes it attractive for breeding of plant pests such as whiteflies (Bemisia spp.), bollworms (Helicoverpa spp.), spider mites (Tetranychus spp.), fruit flies (Bactrocera spp.), leafminers (Liriomyza spp.), and thrips (Thrips tabaci and Allium cepa) among others. These pests are an issue of high phytosanitary concern as they attack fresh produce and thus compromise the quality and marketability of such the products. Thrips for example attack a variety of vegetables, flowers and fruits by feeding on the leaves, thus reducing these products' photosynthetic potential, which eventually reduces the size of the final produce, such as onion bulbs and fruits. The reduced product size becomes a quality defect that affects the marketability of the final produce. Moreover, thrips are agents in the transmission of bacterial, fungal and viral diseases such as Iris yellow spot disease and purple blotch (Alternaria porri), which affect crops by reducing their yield quality and quantity. In snap beans (Phaseolus vulgaris), western flower thrips (Frankliniella occidentalis) reduces the quality of pods by affecting the plants at flowering stages. The resulting pods are usually deformed, a quality defect that is unacceptable in export markets. Whiteflies (Bemisia tabaci) are also agents of disease transmission in various crops such as snap beans and tomatoes (Solanum lycopersicum), as they affect leaves and eventually the final produce by reducing the photosynthetic potential. Fruits flies also attack mangoes by lodging themselves into the fruit as its formative stage, thus compromising its marketability. The detection of insects and/or pests and other defects caused by pests is a reason for the interception of fresh produce in most large export markets such as the EU. The losses caused by pest attacks are immense, in addition to causing frosty trade relations between exporting and importing countries due to phytosanitary concerns. The export of fresh vegetables continues to be plagued by harmful organisms, with bulky arthropod pests for example contributing significantly to interceptions of fresh produce exports in EU. For example, Kenya was performing poorly on the export of mangoes until it imposed a self-ban in 2014. Quarantine measures were thereafter implemented for 7 years until the ban was lifted in 2021. This corrective measure is slowly contributing to recapture of the lost mangoes export business in the EU.

The specific prevailing trade regimes between Kenya and her lead export markets for fresh vegetables and fruits are governed by the provisions of trade agreements and market access conditions elaborated in parts 2.4.2 to 2.4.6 below.



36. Kenya Export Promotion and Branding Agency

2.4.2 Asssessment of The European Union Market

2.4.2.1 The EU-EAC (Kenya) Economic Partnership Agreement (EPA)

The EU and Kenya concluded the EU-Kenya EPA on 19 June 2023, aimed to facilitate implementation of the EU-East African Community (EAC) EPA, which was negotiated in 2014 and signed by Kenya, Rwanda, and the EU in 2016, but could not be applied as it required ratification by all the EAC countries. Kenya is thus the first EAC country to ratify it, following a decision by the EAC Heads of State Summit on 27th February 2021 to allow Kenya to conclude its ratification based on its classification by the United Nations as a developing country, while the other EAC countries that are classified as Least Developing Countries (LDCs) will continue to benefit from Everything-But-Arms preferential tariffs on exports to EU until they ratify the Agreement. The EPA commitments represent a crucial deliverable of the EU 2021 Trade Policy Review and its trade policy with Africa, thus helping the EU to deepen and expand its current trade agreements with African countries and enhance their sustainability objectives. The Agreement provides for duty free and quota free access for all goods originating from Kenya except Everything-But-Arms (EBA), subject to complying with EU rules of origin, SPS[37], TBT[38], Customs and Safeguards measures. It is expected that the Agreement will boost Kenya's trade in goods, create new business opportunities, and enhance the country's economic development. It is the most ambitious EU deal with an African country as it includes provisions on climate and environmental protection and labour rights. The agreement is expected to provide for immediate full liberalisation of the EU market for Kenyan originating products, and to incentivize EU investment to Kenya, based on increased legal certainty and stability.

The Agreement contains strong trade and sustainability commitments, including binding provisions on labour matters, gender equality, environment, and the fight against climate change. It also includes a dedicated chapter on economic and development cooperation, aimed to enhance the competitiveness of the Kenyan economy. The EU is Kenya's first export destination and second largest trading partner, totalling US$ 1.13 billion or 13.3% of total Kenya exports in 2022. Kenyan exports to the EU regional trading block also grew from US$ 900.3 million in 2018 to US$ 1.1.3 billion in 2022 or by 23%. The Agreement is also balanced as it allows Kenya to take a longer period to gradually open its market to EU imports in order to safeguard agriculture and protect the country's developing industry. The Agreement contains a number of market access provisions for EU and Kenya as elaborated below.

1. **Provisions on trade and investment opportunities for Kenya and EU businesses: The Agreement:**
   - Provides free access to the EU single market by removing tariffs and quotas on all Kenyan exports of goods (except arms).
   - Provides for asymmetrical trade liberalisation, where Kenya will partially and gradually open its market to imports from the EU, taking account of the different levels of development between EU and Kenya. This will enable Kenya to benefit from a transitional period during which sensitive products will be excluded from liberalisation.
   - Provides for measures to deal with unfair trade. It references and incorporates the WTO law on dumping of products at unreasonably low prices in either the EU or Kenya markets. The inclusion of safeguards will also allow the EU and Kenya to reintroduce duties if a surge in imports originating from either Party's territory threaten to disturb their economies. Special safeguard conditions are envisaged to protect Kenyan infant industries (those that Kenya seeks to develop), while unjustified or discriminatory restrictions on imports and exports will also be disallowed.
   - Provides that Rules of Origin (ROO) will define the products eligible for trade preferences under the EPA, as set out in relevant EU Market Access Regulations on duty-free and quota-free access to the EU market for products originating in ACP[39] countries as long as they do not benefit from the EU Everything-But-Arms (EBA) scheme of tariff preferences. It is envisaged that a new Protocol on ROO will be concluded within the first five years of the implementation of the EPA (i.e. by June 2028).

37. Sanitary and Phytosanitary measures
38. Technical Barriers to Trade
39. African, Caribbean and Pacific countries

- Provides that EU and Kenya will apply efficient custom procedures, aimed to facilitate trade, promote use of efficient customs procedures, facilitate closer cooperation between Kenya and the EU customs institutions, and provide support to the Kenyan customs administration.

2. **Provisions on Agriculture, industrial development, and diversification of trade: The Agreement:**
    - Provides that all the 27[40] EU Member States will not apply export subsidies for agriculture products originating from Kenya, even in times of market crisis; aimed at guaranteeing sustainable agricultural development (including food and nutrition security), rural development (including the sustainable use and management of natural and cultural resources), and income and job creation in the agricultural sector in Kenya.
    - Allows for the two Parties to address animal and plant, hygiene measures and health-related trade issues covered under SPS measures, and to harmonise intra-regional standards in accordance with international standards. This provides an opportunity for Kenya to enhance, implement and monitor SPS measures. The agreement also provides that the EU will continue to adopt and enforce its food safety rules on imports, which are the same for domestically produced products.
    - Reinforces joint work on SPS matters and engagement in policy dialogue on agriculture and food security, including transparency on respective domestic policies.
    - Provides for EU development assistance through trade capacity-building measures, aimed to support farming and rural employment in Kenya, and farmers' capacity to comply with agricultural standards and SPS requirements necessary to access the EU market for agricultural products.
    - Establishes an effective mechanism to solve disputes that may arise regarding the interpretation and application of the Agreement's provisions. This includes independent panellists and due process and transparency involving open hearings, publication of decisions, and the opportunity for interested parties to submit written views on areas of concern. In the interim, until the envisaged dispute settlement system is concluded as part of the EU-Kenya EPA, any trade related disputes between Kenya and EU countries will have to be dealt with through the WTO dispute settlement system.

3. **Provisions on trade and sustainable development: The Agreement:**
    - Includes a dedicated chapter on Trade and Sustainable Development that covers labour, gender equality, as well as environmental and climate matters.
    - Includes respect and promotion of the International Labour Organization (ILO) fundamental rights on labour, and the implementation of UN standards and obligations to prevent gender discrimination and support to women's empowerment.
    - Commits the signatory Parties to the implementation of multilateral environmental agreements (e.g. the Paris agreement on climate change), and contains obligations to combat illegal wildlife trade, illegal logging, and illegal, unreported and unregulated fishing.
    - Specifies that the joint implementation trade and sustainable development, labour and environmental standards are binding and enforceable, and in case one of the two signatory Parties violates these commitments, this can trigger dispute settlement, and the Party which is found to be in violation of its commitments will have to promptly inform how it will implement the issues under contention within a certain period of time specified in a panel report.

4. **Provisions on implementation and monitoring. The Agreement:**
    - Has an institutional chapter incorporating ministerial, senior officials and technical bodies to steer, support and oversee its implementation.
    - An economic and development cooperation chapter, aimed to enhance the competitiveness of the Kenyan economy by building supply capacity and assisting Kenya with implementation of its commitments.
    - Offers the possibility of adding new areas once Kenya is ready to take up such commitments. For instance, provisions on trade in services, competition policy, investment and private sector development, intellectual property rights, transparency in public procurement could be envisaged within five years following the entry into force of the Agreement.

40.Austria, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, Spain, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Poland, Portugal, Romania, Slovenia, Slovak Republic, Finland, and Sweden.

- Gives civil society representatives (business associations, trade unions, non-governmental associations) a role in its implementation, including provisions on trade and sustainable development. Domestic advisory groups will be set up to advice on the implementation of the Agreement.
- Includes a commitment to initiate a review of the disputes settlement aspects of the agreement, as soon as the EPA comes into force.

In addition, the duty-free quota free market access and dispute settlement provisions, the EPA allows the EU to apply its commitments under the WTO, including:

5. Use of WTO TBT Agreement[41] Provisions

The EU has adopted the provisions contained in the WTO TBT Agreement with the aim of facilitating EU businesses to access markets of third countries. In this regard, the WTO TBT agreement aims to:

- Allow all WTO countries to maintain their right to adopt regulations aimed at pursuing legitimate objectives; including the protection of public health, consumers, and the environment,
- Prevent the creation of unnecessary technical barriers to international trade,
- Prevent adoption of protectionist measures,
- Encourage global harmonisation and mutual recognition of products between exporting and importing country, and
- Enhance transparency on traded goods.

The TBT Agreement enables all WTO members and economic operators to gain advance knowledge of new technical regulations and conformity assessment procedures envisaged by other countries before they are adopted. Enterprises can therefore use the notification procedure as a source of information on market access conditions in non-EU countries and make appropriate preparations to ensure their products and services comply with these conditions. They can also discuss the envisaged measures with the notifying country, which could result in the amendment of the notified measure or even in its withdrawal by the proposing country. EU follows the WTO dispute settlement procedures whenever a notification is made by an aggrieved country regarding encounter with a trade barrier related to TBT in EU. In this respect, the WTO procedure requires whenever a WTO member country notes existence of a trade legislation/measure being applied or intended for introduction by another WTO member country which could potentially contain technical barriers to trade, the aggrieved or concerned country should submit such legislation to the other WTO Members. The WTO members can then assess the impact of the legislation/measure on their exports and indicate provisions that are in breach of the TBT Agreement. The WTO Secretariat will then circulate such legislation to all WTO members with a notification to submit their written comments on the proposed measure within a period of 60 days. For EU, the EU TBT Enquiry Point uploads the notification form (which describes the content of the measure) on its dedicated database as soon as it is informed of the proposed measure. The Enquiry Point then contacts the notifying country to request the whole text of the suggested measure. During the 60 days period of submitting comments, the intended introduction of the new measure is frozen. For EU, comments are sent directly by the EU TBT Enquiry Point to the member country intending to introduce the measure. In EU, economic operators (including industries) are also allowed to comment on other WTO Members' notifications with the intention of preventing the emergence of trade barriers (for example if the intended measure may end up favouring national products or creating unnecessary obstacles to international trade). Procedures for notifying contention of new measures apply for all products traded by WTO Members, including vegetables and fruits exported by Kenya to the EU.

41. Technical Barriers to Trade

6. Product Quality Requirements

The EPA allows EU to apply product quality requirements which align with provisions of the WTO TBT Agreement. In this regard, EU quality requirements specify that beneficiaries of preferential tariffs must meet safety, health and environmental standards, which are applied equally on EU produced goods. Such technical rules define specific product characteristics including design, labelling, marking, packaging, and functionality and/or performance; aimed to protect human, plant and animal life and health; and safety of the environment in EU.

In most cases, the EU regulations define the desired targets to be achieved and the hazards to be dealt with but excludes technical solutions. Based on the fact that product requirements vary significantly between countries and between trading blocs, they can be costly for traders who have to comply with different requirements in different markets. The EU technical rules and regulations are therefore often harmonised with those applied by beneficiary countries. This is intended to enable businesses in beneficiary countries to sell the same product with fewer modifications into both EU and the beneficiary country's market. The harmonisation process aims particularly to empower small companies (including micro-enterprises) to compete with larger companies in a given market and to participate in international supply chains and e-commerce. In the EU market, the CE marking is used to indicate that a given product meets all the safety, health, and environmental protection requirements in order to be sold in the European Economic Area (EEA).

7. Application of EU Tariffs

Although the EU-Kenya EPA provides Kenya with duty free and quota free market access into EU, it also allows EU to apply other customs-related provisions based on need, including valuation of imports, anti-dumping duties, and anti-subsidy (countervailing) measures; aimed to safeguard EU producers as elaborated below.

- **Customs Valuation:** This refers to calculation of the economic value of goods declared for importation. The consequent applied customs duties (and VAT) are calculated as a percentage of the customs valuation (based on CIF value of goods). Although valuation will not apply as regards import duty on Kenyan originating goods as they are duty free, other domestic taxes still apply in the EU destination country (such as VAT, anti-dumping duties, anti-subsidy and safeguard duties, etc.). Logically, the calculation of the amount of such domestic taxes will have to rely on the customs valuation of the imported goods, including fresh vegetables and fruits. In addition, the imported goods must comply with EU public morality, public policy, and public security requirements; and any other regulations intended for protection of human, animal or plant health and life, and the environment.
- **Anti-dumping measures:** Any imported product can be subjected to EU anti-dumping duties or other trade defence instruments aimed to protect EU producers; based on:
  a) Submission of complaints by EU producers to the European Commission (EC) if the producers are of the view that a product is being unfairly dumped onto the EU market by producers from non-EU countries.
  b) Opening of an investigation by EC on dumping cases as an own initiative or at the request of an EU Member State.

The EU's Regulation (EU) 2016/1036 of June 2016 is the basic EU anti-dumping regulation on protection against dumped imports from countries which are not members of the EU. This regulation complies with the EU international obligations as defined in the WTO Anti-Dumping Agreement. EU anti-dumping investigations commence after the EC publication of the producers' complaint and the product concerned in its Official Journal. The maximum time limit for completing an investigation is 15 months, whose detailed findings must be published in the EU Official Journal; including whether anti-dumping duties will be imposed on the import product under contention or whether the case is terminated without anti-dumping duties being imposed. The conditions for introducing anti-dumping measures by any EU Member State requires:

a) Evidence of dumping by exporting producers in the country/countries concerned
b) Evidence of material injury suffered by the impacted EU industry
c)Evidence of a causal connection between the alleged dumped product and injury caused to the impacted EU industry

If the investigation finds that the above three conditions have been met, anti-dumping measures can be imposed on imports of the product concerned in the form of one of the following:
a)An ad valorem duty (taxed according to transaction value)
b)Specific duties (taxed on the specific amount of the product alleged to be dumped)
c)Price undertakings (where the non-EU exporter agrees to sell its products at a given minimum price in the EU)
d)Application of the 'lesser duty' rule (a higher-than-normal tax)

If the EU accepts the producer's price undertaking, (a voluntary increase in price), anti-dumping duties will not be collected on imports. However the EC is not obliged to accept an offer of a price undertaking. In addition, the 'lesser duty' rule can be applied, which entails a duty may be imposed to remove the effects of dumping on imports of a particular product. An assessment is made of the level of lesser duty needed to remove the injurious effects of dumping. The anti-dumping measures are generally imposed for a period of 5 years, which may be reviewed if the circumstances of the exporters change during this period; if EU importers request a full or partial refund of duties paid; or if new exporting producers request an accelerated review. The EC monitors the imposed measures to ensure they are effective and respected by exporters and importers.

- **Anti-subsidy or countervailing measures** Anti-subsidy or countervailing measures are intended to offset the effects of an unfair subsidy applied by an EU trading partner. They are usually applied in the form of increased duties (an additional ad valorem or specific duty), or a minimum import price (a 'price undertaking' where the exporter commits to sell the product above a given minimum price). Similar to anti-dumping proceedings, an EU industry must lodge a complaint with the EC if it believes that imports from a non-EU country are subsidised, and are injuring the EU industry producing the similar or equivalent product.

- **Safeguard Duties:** Safeguard measures can be applied when an EU industry is impacted by an unforeseen, sharp, and/or sudden increase of imports which are similar or equivalent to those it produces. Such measures are rarely used, and only in very specific circumstances. They can consist of quantitative import restrictions (trade quotas), or duty increases. The latter may apply to all similar/equivalent product from all trading partners, or on goods from specific origins.

8. EU Rules of Origin

The EU Certificate of Origin is required for all goods obtained, manufactured, produced or processed in countries that benefit from preferential tariffs, and is applicable thus on Kenyan originating goods as part of the EPA provisions. In Kenya, the Certificate is obtained after an exporter complies with the following statutory export requirements:

- Registration as an exporter of horticultural produce (fresh fruits, vegetables, plants and flowers) through the Kenya Agriculture and Food Authority's (AFA) Integrated Management Information System. AFA in this regard is mandated to regulate all scheduled food crops, leguminous crops, root crops and tuber crops (cereals, legumes and roots, and tubers).
- Obtaining the AFA export certificate as an indication that the consignment has been cleared for export, and that the produce has been sourced from registered growers or registered growers' associations. .
- Obtaining a phytosanitary certificate on each consignment from the Kenya Plant Health Inspectorate Service (KEPHIS) to certify that plants and plant products are free from regulated pests and conforms to the phytosanitary requirements of the importing country.

The exporter thereafter obtains the EU-ROO certificate per consignment from Kenya Revenue Authority (KRA) (Rules of Origin Section). To acquire the certificate, an exporter must meet the EU rules of origin (ROO) regulations, which require that products which benefit from preferential tariffs when imported into EU must meet the following criteria:

a) Be wholly obtained,
b) Have undergone sufficient transformation,
c) Must go beyond minimal operations,
d) Comply with tolerance limits (de minimis),
e) Duty drawback, and
f) Be directly transported into EU or comply with non-manipulation rules.

The wholly obtained criteria refers to goods that are exclusively produced in the territory of the origin country which is a beneficiary of preferential trade arrangements with EU. The goods should therefore not incorporate materials from any other country. This includes plants, minerals or live animals, among other products. Being wholly obtained is mostly relevant for live animals and agricultural products.

The goods sufficiently transformed criteria refers to a product which is not wholly obtained in the country that is a beneficiary of EU preferential tariffs, but which incorporates non-originating materials. Such a product should comply with other product-specific rules, including:

- Value-added rule: the value of all non-originating materials used should not exceed a given percentage of the product's ex-works price;
- Change of tariff classification: the production process results in a change of tariff classification between the non-originating materials and the final product. For example, production of paper (HS Chapter 48) may use non-originating pulp of HS Chapter 47;
- Specific operations – a specific production process is required. For example, spinning fibres into yarns; which mainly applies in the textile and clothing, and chemical sectors;
- The cumulation criteria: In order to know whether a product has been sufficiently transformed in the tariff preference beneficiary country, the EU allows an importer or exporter to use non-originating materials sourced from third countries or to process the beneficiary product in a non-partner country. The beneficiary product is considered as originating in the EU or a trade partner country if three types of cumulation are used, namely:
  a) Bilateral cumulation: Which applies to the EU and its partner country; allowing the use of materials originating in the EU as if such materials originate in the beneficiary country, if (i) The value-added rule is used; (ii) The change of tariff classification rules is used; and (iii) The manufacture of final beneficiary product uses certain products which result to product transformation.
  b)Diagonal cumulation: Diagonal cumulation involves more than two countries, and allows the producer to use non-originating materials sourced from defined countries that also benefit from EU preferential tariffs, such as those which are members of an EPA. The rule applies if: (i) The value-added rule is used; (ii) the change of tariff classification rules is used; and (iii) the manufacture from certain products rule is used.
  c)Full cumulation: Full cumulation allows use of materials originating in the EU or a defined country, and use of inputs which are non-originating in the EU or any of the defined countries. The non-originating materials may have been imported by the producer into the beneficiary partner country and used in the production process. It applies if: (i) the value-added rule is used; (ii) the change of tariff classification rules is used; and (iii) the manufacture from certain products rule is used.

The beyond minimal operations criteria specifies that if the product is either not wholly obtained or has not undergone sufficient transformation in the country of origin but has only undergone simple operations, it cannot be considered as originating in order to benefit from EU preferential tariffs. Simple operations may include packaging, simple cutting, simple assembling, simple mixing, ironing or pressing of textiles, painting or polishing operations. The beyond "minimum operations rule" thus defines exclusions from the EU ROO.

The tolerance limits (or de minimis) rule allows the use of non-originating materials that are normally prohibited by the product-specific rule up to a certain percentage; normally 10% or 15% of the product's ex-works price. The rule applies if the ROO attributed to the beneficiary product is not satisfied, which means the product may still be considered as originating from the beneficiary country if the value of the non-originating materials does not exceed a concrete/defined threshold specified in each set of rules of origin; normally a threshold of 10% or 15% of the ex-work price of the good. If the rule applicable to the good is one of those described under 'sufficient transformation', tolerance can apply in the following instances:

- *If the change of tariff classification rule is used, the tolerance allows the producer in the partner country to use non-originating materials which have the same tariff headings as the final product; provided that the value of these materials does not exceed the tolerance threshold. This threshold is specified in the relevant rules of origin.*
- *If the manufacture of specified products rule is used, the tolerance permits the producer in the partner country to use non-originating materials that represent a later stage of production, provided that their value does*

not exceed the tolerance threshold. This threshold is specified in the relevant set of rules of origin.

- *If the value-added rule is used, the tolerance cannot be used for the product as the threshold for the specific ROO attributed to the product. In this case the maximum percentage threshold cannot be exceeded.*

The Duty Drawback criteria applies if import duties were paid on non-originating materials used to process a product which is then exported to EU under preferential tariffs. The importer can apply for a refund of such duties, sales taxes or other fees that were levied upon importation of non-originating materials.

The direct transport or non-manipulative rules specify that for a product to qualify as originating in the beneficiary country, the exporter has to provide proof that the product was sent from the 'originating' country and arrived in the EU without being manipulated in another country during the transportation process, apart from the mere operations needed for keeping the product in good condition, particularly if the product is transported through a third country. Typically, trans-shipment or temporary warehousing in a third country is allowed if the products remain under the surveillance of the customs authorities and do not undergo further operations other than unloading, reloading, and/or any operation designed to keep them in good condition. The exporter has to prove to the customs authorities of the EU importing country that the product was transported directly or did not undergo further operations of processing. The customs authority of the exporting country is normally the authority charged with the responsibility of proofing direct transport or non-manipulation by issuing a EUR Movement Certificate.

9. Sanitary and Phytosanitary Measures (SPS)

As in the case of quality standards requirements, EU SPS requirements are intended to protect human, animal and plant health and life and the environment. The applicable SPS requirements for exporting fresh vegetables and fruits to EU (covered under HS Chapters 07 and 08 respectively) are elaborated below.

- **Limitations on use of pesticides:** To avoid health and environmental risks, the EU has specified Maximum Residue Levels (MRLs) for pesticides used on plant and plant materials. Products containing more than the allowed pesticide levels are withdrawn for sale in the European market. MRLs can become stricter with new insights from Europe's food safety authorities. According to "The Rapid Alert System for Food and Feed (RASFF) Annual Report 2020", pesticide residues are the main reason for foods (including fruits and vegetables) being denied market access in EU countries. Supermarket chains also maintain high food safety standards and generally demand more than 33% to 100% of the legal MRLs.
- **Avoidance of contaminants:** Contaminants are substances which are not intentionally added to food, but which may be present as a result of the various stages of the food production, storage, packaging, or transport. Like the MRLs for pesticides, the EU has set limits for several contaminants. For fresh fruit and vegetables, the main concerns relate to contamination of lead, cadmium, and nitrate (mainly for spinach, lettuce and rucola). The rules for processed fruit and vegetables (for example, dried fruit or juices) may differ. As the regulation is regularly updated, exporters are required to keep themselves up to date on new insights on threats to food safety and contaminants which always lead to adjustments in the SPS regulations.
- **Microbiological criteria for pre-cut fruit:** Pre-cut fruit and vegetables supplied to EU must be absent of microbiological hazards such as Salmonella and E. coli throughout their shelf life and during the manufacturing process (including processes such as storage, packaging, or transport).
- **Plant health and phytosanitary regulations:** Fruit and vegetables exported to the EU must comply with European legislation on plant health, which specifies rules for trade in plants and plant products originating from non-EU countries; aimed to prevent the introduction and spread of harmful organisms. The plant health requirements are managed by the competent food safety authorities in the importing and exporting countries. Most fresh fruit and vegetables are subject to health inspections and require phytosanitary certificates prior to shipping. Special requirements including inspections, treatments or declarations that certain pests are absent from imported vegetables and fruits are also needed for large consignments originating outside the EU, such as leafy vegetables, potatoes, tomatoes, peppers, citrus fruit, stone fruit, berry fruit, apples, pears, mangoes, avocados, and leaf celery and basil among others.

Root and tubercle vegetables also require an official statement that the consignment does not contain more than 1% by net weight of soil and other growing medium. The phytosanitary certificates are provided by plant health authorities, and must guarantee that a product has been properly inspected; is free from pests, is within the requirements for of quarantine for pests; as specified in Regulation (EU) 2019/2072.

2.4.2.2 The EU Trade Regime for fresh vegetables and fruits

The EU trade regime for Kenyan originating vegetables and fruits is governed by the overall market access provisions contained in the EU-EAC EPA, namely duty free and quota free market access on all goods except EBA, subject to proof of compliance with the EU ROO and the EUR 1 Movement Certificate. While EU countries do not currently apply any trade remedies on Kenya's prioritised vegetables and fruits (categorised under Chapters 07 and 08 of the Harmonised System respectively), Kenya as well as other exporting countries to EU must comply with other numerous EU specific regulatory requirements/ measures elaborated below.

1. **Limitations on use of pesticides**
   To avoid health and environmental risks, the EU has set Maximum Residue Levels (MRLs) of pesticides used on food and feed consumed by human beings and animals respectively. Products containing more than the allowed MRL tolerance limits of pesticides are withdrawn from the European market whenever pesticide residues on a given product are detected to have exceeded the allowed tolerance limits. MRLs can become stricter whenever there are new insights on plant pests and diseases by Europe's food safety authorities. According to "The Rapid Alert System for Food and Feed (RASFF) Annual Report 2020", pesticide residues are the main reason for food (including fruits and vegetables) being denied market entry/access in EU countries. EU supermarket chains also maintain high food safety standards and generally demand more than 33% to 100% of the legal MRLs on imported foods.

2. **Avoidance of contaminants**
   Contaminants are substances which may not have been intentionally added to food but which may be present as a result of the various stages of its production, including packaging, transport or holding/storage. Similar to the MRLs for pesticides, the European Union has set limits for several contaminants. For fresh fruit and vegetables, the contamination may include lead, cadmium and nitrate (mainly for spinach, lettuce and rucola). The rules for fruit and vegetables may however differ if the goods undergo some level of processing (for example, drying of fruit or juices). As the regulation is regularly updated, exporters must keep themselves up to date on new threats to food safety and contaminants, which leads to adjustments of the regulations.

3. **Microbiological criteria for pre-cut fruit**
   When supplying pre-cut vegetables and fruits, an exporter is required to consider that microbiological hazards such as Salmonella and E. coli must be absent throughout the shelf life of a given freshly cut product, including during processes such as packing, storage or transport.

4. **Plant health and phytosanitary regulations**
   Vegetables and fruits exported to the EU must comply with the European legislation on plant health. The EU in this regard has laid down rules for the trade in plants and plant products from non-EU countries, aimed to prevent the introduction and spread of organisms harmful to plants and plant products in Europe. The said requirements are managed by the competent food safety authorities in the EU importing and the exporting country. Most fresh vegetables and fruits are subject to health inspections and require phytosanitary certificates prior to shipping into EU. Special requirements are needed for: large consignments, including inspections and declarations to confirm certain pests are absent from a given product originating outside the European community. The products which are subjected to such requirements include leafy vegetables, potatoes, tomatoes, peppers, citrus fruit, stone fruit, berry fruit, apples, pears, mangoes, avocados, leaf celery, and basil among others. Root and tuber vegetables require an official statement that the consignment does not contain more than 1% of soil and growing medium by net weight. The phytosanitary certificates issued by plant health authorities in the country of origin must guarantee that a product has been properly inspected and is free from pests, or has been quarantined from pests in line with phytosanitary requirements laid down in Regulation (EU) 2019/2072.

5. **Marketing standards**
   European legislation sets general and specific marketing standards on the minimum quality of fresh fruit and vegetables. A marketing standard determines the characteristics of "Extra Class", "Class I" and "Class II" products, the minimum maturity, the different size codes, and the allowed tolerances in quality and size. Over the years, the EU marketing standards have been aligned with the UNECE[42] standards for fresh fruit and vegetables and provide guidance to businesses on the preferred quality sizes, which is generally "Extra Class" or "Class I", although the market for "Class II" products is sometimes to be found in some Eastern European countries *(since the quality varies between the different European markets).* The specific marketing standards for fresh vegetables and fruits are given in Annex I, Part B of EU Regulation No 543/2011; and includes standards for Apples, Citrus fruit, kiwi fruit, lettuce, curly and broad-leaved endives; peaches and nectarines; pears; strawberries; sweet peppers, table grapes; and tomatoes. Every EU country is required to set up a database of traders that market fresh fruit and vegetables covered by EU marketing standards: The national authorities must ensure that checks are carried out selectively, based on risk analysis and with appropriate frequency, to ensure compliance with the marketing standards and other statutory requirements for marketing fruit and vegetables. The risk analysis must be published in the traders' database. National authorities must lay down in advance which criteria they will use to determine the risk of non-compliance for a batch of produce.

   Where checks reveal significant irregularities, the authorities must check more frequently. Based on a product-by-product risk assessment, the authorities may however choose not to selectively check products not covered by a specific marketing standard (as specified by the UNECE standard). Fresh products which are not covered by a specific marketing standard must comply with: the general marketing standards specified in Annex I, Part A of EU Regulation No 543/2011; or the applicable UNECE standard *(which is sometimes less strict than the EU standard).* Exporters to EU or EU operators (such as distributors) are free to choose whether to work with the EU GMS or UNECE standard. If a vegetable or fruit is not covered by any specific European standard, interested exporters or EU operators are encouraged by EU to check for similar Codex Alimentarius[The Codex Alimentarius [43] standards, or the OECD fruit and vegetables scheme. Conformity checks are carried out selectively by EU control bodies to ensure compliance with the marketing standards.

42. United Nations Economic Commission for Europe
43. The Codex Alimentarius (or Food Code), is a collection of international standards, guidelines and codes of practice aimed to protect the health of consumers and ensure fair practices in the food trade.

The checks cover risk analysis, focusing on traders whose goods have a higher risk of not complying with the allowed standards. Controlled vegetables and fruits are accompanied with a certificate of conformity. Non-EU countries may carry out their own conformity checks; and countries that are currently authorised to do their own conformity checks include Kenya, India, Israel, Morocco, Senegal, South Africa and Turkey. Imports of products intended for processing are however not subject to compliance with the EU marketing standards, although they must be clearly marked on the packaging with the words "intended for processing" or other equivalent wording.

6. **Control of food imported in the European Union**

To ensure food safety and avoidance of environmental damage, food and feed products are subjected to official controls, which aim to ensure that food marketed on the European market are safe for consumption and are in compliance with all applicable regulatory requirements. Compulsory plant health checks are carried out on all plants and plant products originating from non-EU countries in compliance with Annex XI, Part C of Regulation (EU) 2019/2072). Such checks include Phytosanitary certificates and documents to ensure that the consignment meets EU requirements; Identity to ensure that the consignment corresponds to the certificate; and Inspection to ensure that the consignment is free from harmful organisms. EU countries also charge a fee for the documentary, identity and plant health checks, which is payable by the importer or his customs representative; and usually settled with the exporter through the account of sales and final payment. In case of repeated non-compliance by specific products originating from particular countries, the EU can decide to carry out more regular controls or to lay down emergency measures at all stages of import and marketing in Europe. However, most checks are done at the points of entry. The traceability of imported fresh vegetables and fruits is also compulsory. To fulfil this obligation, exporters must document the sources of product, and be able to proof origin in order to benefit from preferential tariffs given either under EPAs or EU GSP[44] Scheme.

7. **Labelling and packaging**

Food sold in the EU market must meet the legislation on food labelling, and trade packages and cartons of fresh vegetables and fruits must therefore specify (i) the name and address of the packer or dispatcher; (ii) the name and variety of the produce (if the produce is not visible from the outside of the packaging); (iii) the country of origin; (iv) the class and size of product (as per the marketing standards elaborated in (v) above); (v) the lot number for traceability or GGN if certified under Global GAP; (vi) the official control mark which may be a replacement of the name and address of the packer (optional); (vii) the post-harvest treatment (for example, anti-moulding agents added in post-harvest treatment of citrus fruits must be mentioned on the trade package; and (viii) an organic certification including name of inspection body and certification number if the product has been grown organically. If the vegetables or fruits are processed or directly packed for consumption, the exporter must include appropriate labelling for the benefit of consumers, including:

- Common name of the product and the country of origin;
- Name and address of the producer, packer, importer, brand owner or seller (retailer) in the EU who places the product on the market, and the wording "Packed for:", if applicable;
- Net content in weight; and minimum durability; a best-before date (on all processed fruit and vegetables, such as freshly cut);
- Producer identification or lot number;
- List of ingredients (if applicable), including additives and post-harvest treatment;
- Allergenic declaration (if applicable); and declaration of nutritional value (when mixed with other foodstuffs);
- Packed in protective atmosphere (if applicable);
- Additional information about quality class, size, variety or commercial type and post-harvest treatment on the product and labelling of marketing standards.

44.Generalised Scheme of Preferences, which includes the EBA for LDCs

The EU further requires that the text on the label must be written in one of the official languages of an EU Member State and be understandable for the consumer. Packaging must also comply with the general requirements and specific provisions for protecting the environment and preventing any risk to the health of consumers; including protection against contamination, leakage and dehydration. Also exporters must pay attention to buyer's preference with regard to presentation, such as individual preferences for wrapping or sortation (for example, indication of one side up). In the future, exporters can expect stricter regulations on the use of plastic in packaging; since the new EU Directive 2019/904 on the reduction of the impact of certain plastic products on the environment intends to limit the use of single-use plastics by transferring the cost of waste and responsibility to the producer. In this regard, based on the European strategy on plastics, more and more buyers will demand alternative and environmentally friendly packaging.

In summary, all the EU countries apply a total of 40 official regulatory requirements/measures on vegetables categorised under HS Chapter 07 and HS Chapter 08, which then become the market entry conditions into EU for these Kenyan priority products. The detailed content of the 40 regulations is presented in Annex 14.

8. Additional requirements for importers
European importers apply other private sector driven requirements that are recognised by the Global Food Safety Initiative (GFSI), and in turn by the major retailers, including:

1. **Private Social and environmental compliance standards:** There is growing attention in EU on respect for social and environmental conditions in which products targeting the EU markets are produced. Most European importers have thus developed their codes of conduct, which they will expect exporters to comply with. Although product quality is the top priority, social compliance has therefore gained growing importance as a requirement to access EU markets. Initiatives on corporate social responsibility (CSR) have therefore merged with varying focus across Europe. In the Eastern Europe for example, fewer buyers require strict social compliance, while multinational buyers in Western Europe have developed high quality compliance programmes, such as the Unilever Sustainable Agriculture Code and the Tesco Nurture Accreditation. In some cases, the increasing attention to social and environmental conditions requires specific actions; such as compliance with water management in arid areas as demanded by Rainforest Alliance and which is gaining importance in supporting climate-smart agriculture with the aim of reducing climate impacts. There are also certifications aimed to proof respect to 'living wages' in low-income supply countries. Exporters therefore need to be aware of the certification schemes and standards applied by their target countries, especially when dealing with buyers that are linked to retail chains. In addition, exporters need to be aware of the most commonly used social standards including:

- Global GAP certification, which requires high standards on imported foods including fresh produce. The standard covers the whole agricultural production process from the seeds used during planting (and whether they are certified), the farming process and practices, respect for environment protection, labour conditions and product quality. It has become a minimum standard for accessing most European supermarkets; and is the certification scheme used by most supply chain actors in the EU (buyers, distributors, traders, processors and retailers). As food safety is a top priority in EU, exporters therefore can expect high demands for compliance with social (labour and gender), environmental standards, and food safety and quality management systems including handling or processing of fresh vegetables and fruits
- Sedex Members Ethical Trade Audit (SMETA), which focuses on evaluating and managing food producers' performance and compliance to respecting labour rights, health and safety of workers, the environment, and business ethics;

- GRASP, whose focus is on compliance with corporate social responsibility
- SPRING, which focuses on compliance with sustainable irrigation and groundwater use.
- Fairtrade labels, which are most often used for large product categories such as bananas, although it is not on the top list priority of buyers because of its complex requirements and high compliance costs.
- The IDH Sustainable Trade Initiative, which has a sustainability initiative for vegetables and fruit (SIFAV). This is a pan-European covenant comprising over 30 partners, including retailers, brands, traders and civil-society organisations; whose 2025 strategy focuses on reducing the environmental footprint across the supply chain, improving working conditions, wages and incomes, and strengthening due diligence reporting and transparency.
- The Amfori Business Social Compliance Initiative (BSCI); a north-western Europe initiative which includes a Code of Conduct for CSR for all participating members, and Amfori Business and Environmental Performance Initiative (BEPI) which focuses on compliance with environment protection measures.
- The ISO 26000 whose focus is on social responsibility; and ISO 14001 which focuses on compliance with environmental management.
- The Corporate Carbon Footprint requirements.
- The TUV[45] standards applied in Germany by the Technical Inspection Association of German consulting businesses, aimed to certify compliance with various recognized safety and qualification standards.
- The IFS food standard applied commonly in Germany. Similar food safety and management certification standards are applied by other EU countries although they vary depending on the trade channels and market situations; which implies that buyers can be more lenient during supply shortages, but in general, an exporter can only access EU markets if required certifications and standards are in place.
- The Safe Quality Food (SQF) programme and FSSC 22000, a food industry standard developed by the International Organization for Standardization (ISO).

2. **The Green Deal**
   To overcome the challenges of climate change and environmental degradation which are an existential threat to Europe and the world, the EU has developed the European Green Deal, aimed to transform the EU into a modern, resource-efficient and competitive economy that ensures no net emissions of greenhouse gases by 2050, and that EU achieves sustainable economic growth which is decoupled from resource use. The Green Deal is also direct a response to the COVID-19 pandemic; where EU wants to reduce the use of pesticides in fresh produce farming by 50% in favour of organic farming, which could in future reduce importation of foods from African countries. The Deal targets to utilize one third of the €1.8 trillion investment from the "Next Generation EU Recovery Plan", which will be financed through the EU seven-year budget. As part of the Green Deal, the European Commission (EC) has adopted a set of proposals to make the EU climate, energy, transport and taxation policies fit for reducing net greenhouse gas emissions by at least 55% by 2030 compared to 1990 levels. Being a key policy on sustainability, the Deal will influence the use of resources and reduction in greenhouse gas emissions. The Farm to Fork Strategy is part of the Green Deal, and specifically aims to make food systems fair, healthy and environmentally friendly. It will ensure sustainable food production, and address packaging and food waste among others. EU trade agreements with several countries already include rules on trade and sustainable development, including the EPA with EAC (Kenya). For suppliers of fresh vegetables and fruit, it is important to look ahead of the increasing standards in order to accordingly prepare themselves for compliance.

45. Technischer Überwachungsverein

3. **Requirements for niche market**
   In addition to the official and private standards, other specific requirements apply on organic vegetables and fruits for niche markets. An increasing population of consumers in Europe prefer organic vegetables and fruits because of their natural and sustainable production methods and their connection to a healthy diet. Italy, Ireland, France, Germany and Sweden consumers particularly prefer consumption of organic vegetables and fruits and combined represent about a fifth of the total EU demand for organic products. To market organic products in Europe, exporters have to use organic production methods according to the new European legislation for organic products (EU) 2018/848 introduced in January 2022. The legislation lays down the rules on organic production and labelling of organic products. A number of delegated and implementing measures are foreseen in this legislation; including inspection of organic products, which will apply equally on imports and goods produced in the EU. Before certifying an organic product, an exporter is required to have used the organic production methods for at least 2 years which is regarded as a conversion period; which requires maintaining the required soil fertility, water retention, avoidance of cross contamination, and use of organic inputs and reproductive materials. The organic methods can be a challenge for farmers in countries with tropical climates or with limited access to organic reproductive materials and inputs. To acquire an organic certification, a farmer or exporter acquires registration and certification from a recognised control body or accredited certifier. The control body or certifier is responsible for verifying that the exporter complies with the organic rules through an annual inspection and a set of checks or audits. After successful completion of this process, the exporter is allowed to use the EU organic logo and the logo of the standard holder on products exported to EU. European countries may prefer a national organic standard in line with the EU certification process, but which however often exceeds the specified EU requirements. National standards can also be an addition when supplying specific markets; such as:

   - The organic standards of Naturland, which is one of the leading organic associations in Germany. Operators adhering to the Naturland brand are required to comply with more restrictive ecological standards than those required by European legislation (EC Reg. 834/07). The Naturland standards also include social responsibility requirements.
   - The organic standards of KRAV, which is Sweden's leading organic production certification organization. The products marked with its logo are well known in the Swedish market and appreciated by consumers for the high level of guarantee offered and the important institutional role played by this organization.
   - The organic standards of Bio Suisse; a Switzerland association that incorporates a total of 7,500 organic producers and organic gardeners, in addition to more than 2,300 operator and producer groups worldwide who are certified according to the BioSuisse standards. Their products appear on store shelves under the BIOSUISSE ORGANIC label. Licensees are processing and trading companies that process, package and trade products after acquiring a licenced contract with Bio Suisse and committing to adhere to the Bio Suisse Standards.

   In addition, all organic products imported into the EU must be accompanied with the appropriate electronic certificate of inspection (e-COI), which is managed through the Trade Control and Expert System (TRACES). If an organic product lacks the electronic certificate of inspection, it will not be released from their port of arrival in the EU importing country.

4. **Fairtrade and environmental labels**
   Fairtrade and environmental product labels (visible to consumers) are additional requirements that aim to distinguish niche products from others with similar appearance, and mostly attract the more quality conscious consumers. The Fairtrade certification label is therefore consumer-focused and mostly applies on products from smallholder farms and some key fruits and vegetable categories. Typical fruit varieties that can be found with these labels are bananas, pineapples and coconut, while the well-known Fairtrade labels include "Fair for Life", "Fairtrade", and "Rainforest Alliance".

2.4.2.3 Trade enabling conditions in the EU markets for fruits and vegetables

1. **Historical, peace and security, and development cooperation relationships between Kenya and European Union**

   Kenya and the European Union have had a long-standing relationship that dates to 1976 when the predecessor of European Delegation *(the then European Community)* opened an office in Nairobi. Kenya became the first country to sign a cooperation agreement with the European Community in the same year under the Lomé Convention (EEAS 2014). In 2014, the European Delegation in Nairobi was one of the largest in the world with more than 150 staff, which was accredited to Kenya as well as to the UN Environment Programme (UNEP) and the UN Centre for Human Settlement (UN-Habitat) which are both headquartered in Nairobi. Development cooperation has thereafter been an integral part of Kenya-EU relations, which also extends to other areas such as trade *(as demonstrated by cut flower and fresh produce exports)*, political, diplomatic, security, and humanitarian aid relations.

   The current EU-EAC EPA (with Kenya being the only current EAC beneficiary country) is hailed as the most comprehensive and ambitious EU deal with an African country due to inclusion of climate protection and labour rights. The Development Cooperation chapter is a key pillar of the partnership. The European Joint Cooperation Strategy 2018-2022 points out that a plan will be jointly developed between the EU and its Member States present in Kenya to facilitate implementation and monitoring of EU development cooperation with Kenya. The strategy is fully aligned with Kenya's national development plans, and outlines sectors where joint response will be directed and the objectives that will be achieved. The strategy particularly focuses on supporting Kenya Government to achieve its national priorities and objectives, paying specific attention to manufacturing, food security, universal health care, and affordable housing (https://www.eeas.europa.eu/delagations/kenya). The strategy is expected to receive Euro 4.5 million from EC.

   It is also notable that development cooperation has been a key pillar of Europe's comprehensive partnership with Kenya, focusing on supporting social, economic, and political development through EC grants under the European Development Fund (EDF), EIB loans, and other bilateral programmes implemented by EU Member States. Despite the fact that Kenya has 'graduated' to the status of low middle-income country, there is still sizeable development assistance delivered to Kenya by the EU and individual Member States; thus making the EU block the largest source of official development assistance to Kenya. Eleven (11) EU Development Partners have active bilateral cooperation programmes in Kenya; including Denmark, the EU and the EIB, France, Finland, Germany, Italy, Ireland, Slovak Republic, Sweden, the Netherlands. Other EU bilateral partners present in Kenya are Austria, Belgium, the Czech Republic, Greece, Hungary, Poland, Portugal, Romania and Spain. The EU is also a major source of support for Kenya's humanitarian aid, and provides funding for EAC regional security needs. As the largest supporter of the peace and security process in Somalia in terms of financial support to the African Union (AU) Mission to Somalia (AMISOM), the Eastern Africa Standby Forces (EASFCOM), and the Intergovernmental Authority on Development (IGAD) peace efforts, the EU has clearly demonstrated its commitment to supporting Kenya and the larger Eastern Africa region to achieve peace, security and stability aspirations. The EU support to the EAC regional integration and cooperation efforts has additionally provided an opportunity to enhance economic and social growth and prosperity in the region in line with the EAC vision for a prosperous, competitive, stable and secure East Africa through widened and deepened economic, political, social and cultural integration (https://www.kenya-EUstrategy.com)

2. **The EU air, road, and sea transport networks**

   Kenya has good logistical routes for air and sea transport of fresh produce to EU countries, with airfreight being the most commonly used mode of transport for fresh vegetables such as fine beans, while sea freight is used for bulky produce like avocados and mangoes. An Air flight from

Nairobi to Amsterdam takes 9 hours 30 minutes, meaning that Kenya is less than one day to the EU destination markets by air. Kenya is also a well-known horticultural producer in EU countries with respect to cut flowers, fresh vegetables (mainly fine beans, snow peas, broccoli and capsicums) and fruits (mainly avocados, mangoes and pineapples).

3. **The EU population, GDP and GDP per capita as trade enabling factors for Kenyan vegetables and fruits exports**

Assessment of several economic indicators (sourced from the World Development Indicators; World Bank; https://www.worldbank.org) as presented in Annex 15 draw the conclusion that the EU is a highly attractive market for Kenya's fresh vegetables and fruits. In this regard:

- The EU final consumption expenditure grew by 2% in 2018 and 2019 but declined to -5% in 2020 (due to COVID-19 pandemic). Thereafter it grew by 4% in 2021 and by 3% in 2022. Overall the final consumption expenditure grew by an average 3.8% during the period 2018-2022,
- Food imports as a percentage of merchandise imports stood at 9% during the period 2018-2022, except in 2020 when it was higher at 10%,
- The combined GDP for the EU Member States grew by an average 4% between 2018 and 2022, from a high of US$ 16 trillion to US$ 16.64 trillion in 2022,
- The GDP per capita grew from a high of US$ 35,749 in 2018 to US$ 37,150 in 2022 or by an average 4% between 2018 and 2022. Except in 2020 when the GDP per capita declined by 6%, the other years demonstrated increasing GDP per capita growth of between 2% (2018 and 2019) and 6% (2021),
- Imports of goods and services as a percentage of GDP grew from a high 45% in 2018 to 54% in 2022, representing an annual growth of 8% during the period,
- In value terms, EU total imports of goods and services based on 2015 prices grew from US$ 6.7 trillion in 2018 to US$ 7.55 trillion in 2022,
- The EU total population grew by a very small margin between 2018 and 2022, although the total population is high at 447 million in 2018 and 448 million in 2022,
- The total EU urban population grew by 1.5% between 2018 and 2022 from a high of 333.1 million in 2018 to 338 million in 2022. In addition, The EU is highly urbanized, with an average of 75% of the region's population living in urban areas. This is the population that is the captive market for imported goods including fresh vegetables and fruits, and so Kenya's exports of the prioritised products are assured of a ready market as long as the products observe specified market access conditions like quality standards; and social, environmental, and sustainability standards,
- The EU has a good railways network for internal transportation of goods from the ports of entry to the intended domestic markets of EU Member States. The railways network transported a total of 10,792 million tons of goods in 2018, dropping slightly to 10,299 million tons in 2022,
- The average time to complete all border compliances at the EU entry border points stood at 7 hours in 2018 and 2019, and at 2 hours to complete other documentary compliances in both years; with some best performers achieving the international best practice of 1 hour for these processes (Bulgaria, Greece) recorded by World Bank Doing Business Indicators in 2019
- The cost to complete all border compliances for an imported 20ft container at the EU entry border points stood at an average 30 US$ in both 2018 and 2019, and at 5 US$ to complete for other documentary compliances during both years. The border compliance process however compares poorly with international best practices of an average US$ 1 for similar processes achieved by Liechtenstein, Canada, S. Korea, New Zealand, and Hong Kong; while the cost for completing other documentary compliances for an imported 20ft container was closer to the international best practice of US$ 1.

4. **Participation of EU private sector in implementation of the European Economic Community framework and in trade agreements with third parties**

There are over 200 trade associations that participate in the EU economic integration process through lobbying and advocacy for an enabling business environment as shown in Annex16. The associations are also engaged in business networking with producers and exporters in EU partner countries. The participation of these associations in the EU integration process and related activities is fully supported by the EC in recognition that:

- The delivery of the UN Sustainability Development Goals (SDGs) should involve the active participation of public authorities as well as full participation of civil society and the private sector. This is important for effective and transparent communication with citizens, national, regional, and local authorities, media, civil society organisations, the private sector, and stakeholders regarding the SDGs implementation process, the benefits and challenges. For example, the sustained involvement of trade associations and civil society organisations are important in mobilising national-level stakeholders in delivery of SDG 13 (promotion of actions on climate change), and other interrelated SDGs on climate change actions (such as Goal no. 15 which seeks to protect and restore terrestrial ecosystems and halt biodiversity loss). Also, the EC encourages public participation through private sector and civil society as part of efforts to give EU citizens a greater say in what the EU does and how it works for them; which is consistent with SDG 16 (which seeks to achieve peaceful and inclusive societies, rule of law, effective and capable institutions).
- Private sector development plays a significant role in creating economic growth, employment and improved living conditions. In 2017, the EC adopted the EU External Investment Plan (EIP), a €4.5 billion initiative which encourages private investment for sustainable development projects through bank guarantees, technical assistance and expertise. The private sector is also supported to achieve sustainable and responsible industries that can drive inclusive and sustainable economic growth. Additionally, EU prioritises measures which ensure that consumption in the EU does not undermine human rights, labour rights, environmental protection, and economic opportunities for players involved along the supply chain. The EC is also supporting creation of European Chamber of Commerce in various African countries in order to identify obstacles to business development and to improve trade between the African Continent and the EU countries.

5. **Provision of Business Development Services (BDS) to EU the business community**

There are many companies and groups in EU which provide BDS to EU and foreign businesses, ranging from business consultancies, assistance to access EU markets, and assistance in complying with EU environmental standards. These BDS providers could offer essential support to Kenyan exporters of fruits and vegetables who are either aspiring to venture into EU markets for the first time, or who are facing difficulties in complying with EU market entry requirements. Some few examples of the EU BDS providers are elaborated below.

- **EuroDev:** This BDS provider supports foreign companies (mostly North American companies) in mapping expansion strategies in EU, including assistance with gaining insights into how European markets operate and how to access promising business opportunities. It also supports companies to develop and apply digital marketing strategies in the EU market.
- **Westworld Consulting:** Supports foreign companies (mostly North American companies) to accelerate entry into the European Market. It provides foreign businesses with professional representation and expert support and advice; including supporting foreign companies to approach potential clients with an aim to win orders and contracts. Specific BDS offered include:

a) Strategic advice and support; market research and competition analysis
b) Professional representation and support in preparation of bids, proposals and tenders
c) Meetings set up and facilitation with prospective clients
d) Company start-up and handholding
e) Trade shows and exhibitions support
f) Offices set up and HR recruitment

- **Western Europe Business Management Consulting:** Helps EU and foreign businesses to optimise resource use in order to improve performance by analysing the firm's business plans and providing solutions to meet business goals. It also supports in business strategic consulting, planning, training, outsourcing, and other business management services.
- **The EU4Business Initiative (https://www.eu4business.eu):** This initiative helps SMEs to access new EU markets and to comply with international quality standards and requirements. It also links SMEs with EU buyers along the value chain by providing advisory support.
- **The D4D Hub Private Sector Advisory Group;** which is supported by the EC to promote the private sector voice in human-centric digital transformation. The platform works with EU institutions and Member States with an aim to support the private sector to promote capacity for a values-based digital transformation in recognition that ICT businesses and associations are crucial partners in fostering sustainable, responsible and inclusive digital economy investments in EU Member States. The D4D Hub established the Private Sector Advisory Group (PASG) in April 2022 as a network of businesses and policymakers aimed to promote a digital future that benefits all Member States and private sector organisations. The PSAG is a consultative body which aims to improve dialogue among key stakeholders on bottlenecks, challenges and solutions to digital transformation, based on generation of high-impact partnerships and interventions achieved through public-private quarterly meetings, engagements and partnerships in Africa, Latin America, the Caribbean, and Asia-Pacific countries. Through these engagements, members get an opportunity to contribute to formulation of business-friendly policy and regulatory environment; facilitated identification of new business opportunities in EU partner regions, and to have an effective platform for exchange of best business practices in human-centric digital transformation. Members of the Hub are enterprises from Europe and its partner countries in Africa, Latin America, Caribbean, Central Asian, and South ASEAN countries; all which are active in the digital sector (start-ups, SMEs, large corporations). Membership also includes business associations which agree with a values-based approach to digital transformation (incl. human-centric, sustainable, and inclusive transformation).
- **EU Producer Organisations (POs):** These are the basic actors in the fruit and vegetables industry, and assist growers to strengthen their positions in the marketplace. The EU fruit and vegetables regime which is supported by the EC assists the POs to implement operational programmes with funding contributions of up to 50% of a given PO total operational budget, out of which at least 10% must be spent on environmental actions that go beyond mandatory environmental standards. The funding also helps the POS to implement the EU marketing standards applied on certain products with an aim to promote quality; notably apples, citrus fruit, kiwifruit, lettuces, curled-leaved and broad-leaved endives, peaches and nectarines, pears, strawberries, sweet peppers, table grapes, and tomatoes). The EU fruit and vegetables regime additionally requires national authorities to recognise any group of producers that is in a PO membership, if such groups meet the PO membership requirements. The national authorities are also required to set up a national strategy for sustainable PO operational programmes, which defines measures for eligibility support, and which must be approved by the relevant national authorities. Due to the support given by EC to implement environment and marketing standards, the POs are very influential in reporting notifications on imports which flout specified environmental and marketing standards. Thus Kenya fruits and vegetables exporters need to build networks with the EU POs in order to get assistance with implementation of specified environmental and marketing standards.

2.4.2.4 Export Trade Barriers facing Kenya vegetables and fruits in EU countries

While the duty free and quota free provisions offered on Kenya exports to EU under the EU-Kenya EPA at first glance appear very attractive, there are numerous official and private-driven market entry regulations/ measures for vegetables and fruits which end up translating into market entry barriers in EU destination countries as they are stringently applied at all EU entry ports as elaborated below.

1. **Application of Maximum Residue Levels (MRLs) on use of pesticides**

   The EU has laid out MRLs on use of pesticides which fresh producers are required to comply with as detailed in Annex 14, which in summary include EC regulations on tolerance limits for residues or contamination by certain non-microbiological substances; regulations on control of pesticide residues in plant and animal products intended for human consumption; and regulations on Genetically Modified (GM) foods.

   Inspection on compliance with the provisions of the above regulations is conducted at the EU entry ports aimed to check whether imported fresh produce comply with specified MRLs on pesticides. If the inspection results indicate that pesticide residues exceed the specified tolerance limits, this leads to rejection or interception of the export consignment. This is a serious challenge as it makes exporting to EU a very challenging task particularly for small scale farmers/ exporters of Kenya beans (referred to as French beans in export markets), peas, chilies, and capsicum. The affected producers and exporters in most cases lack financial and technical capacity to enable comprehensive understanding and compliance with the MRLs of various pesticides applied. As a consequence, export consignments have to spend a lot of time at the EU entry ports during inspection, testing and certification process if the imported consignments are suspected to have exceeded the specified MRLs. There are also additional costs incurred by the importer (which are subsequently passed to exporters) during inspection, testing and storage/ warehousing, and sometimes during quarantine, if the latter measure is recommended by the EU authority concerned. In case the export consignment is rejected, the exporter losses the entire value of a given consignment, and additionally has to incur the cost of destruction outside the EU geographical territories. The alternative is to re-ship the goods back to the country of origin, again at the exporter's expense.

   In addition, most importers/buyers in several EU Member States use private standards on MRLs which are stricter than the MRLs laid down in European legislations. The German discounter Lidl for example has one of the strictest MRLs, with a limit of 33% above the EU legal standard for single active substances, which importers claim is the best to work with as it gives them flexibility to come down in case of challenges on imported produce. However, there is competition among supermarkets with several of them using high strict standards as a marketing strategy, and even some imposing financial penalties whenever a violation of their limit is detected. Many exporters often give up attempts to access target EU markets due to the MRL related challenges and subsequent frustrations.

   A related challenge is that the usage of chemical pesticides to manage pest attacks on vegetables causes direct and indirect damage to the environment, as well as to the users and consumers of the produce on which they were used. The unguided use of pesticides thus has negative implications for human health and the environment, since some chemicals used to manage pests and diseases on crops are inherently toxic. The usage of banned pesticides is also a challenge that must always be observed by vegetable producers. Therefore, farmers who continuously use chemical pesticides to manage crop pests and diseases must always keep themselves abreast of changes on pesticides being introduced in the market otherwise they risk losing access to the EU lucrative markets as well as incomes.

   Compliance with EU MRLs specifications is therefore a major challenge to exporting fruits and vegetables to EU countries. A related challenge is that the EU keeps adding new market entry regulations, and also withdrawing some pesticides used to control pests on plants without giving timely notification to producers/exporters of fresh produce. Detection of pesticide residues of the withdrawn pesticides results to automatic rejection of fresh produce consignments at the EU entry ports. The Kenyan originating products mostly affected by non-compliance with specified pesticide MRLs and use of withdrawn pesticides in the EU markets are

Kenya beans, peas, chillies and capsicums. The volumes and the health risks associated with consumption of non-conformant products in the European countries are the key determinants of the strictness in checking on the MRLs. In 2013, Kenya's French beans for example were rejected at the EU entry ports due to the presence of dimethoate residue, a pesticide active ingredient which is regulated for use on vegetables in Kenya. The EU rejection led to reduced volumes of exported vegetables, and to increased inspection of Kenyan originating produce at EU entry ports; resulting to huge monetary losses for exporters. In 2015, the EU additionally introduced more stringent standards and requirements on fresh beans and peas with pods citing the need to guarantee safety of EU consumers, which in turn led to increased demands on Kenyan producers to comply with the new measures.

2. EU Market Entry Conditions

Exporters often find it difficult to comply with SPS official controls required for fresh produce to enter particularly the EU and UK markets. One of the most difficult controls relates to compliance with testing procedures on imports specified in EC regulation No 669/2009, which lays down rules for official controls to be carried at the points of entry in EU for imports of feed and food of non-animal origin. The official controls specifically cover testing, inspection, and quarantine procedures on imported foods against pests, and related costs are borne by exporters. The exporters find it difficult to comply with the complicated and stringent procedures specified in this regulation due to the high costs involved, which ends up as a market entry barrier especially for the capsicum vegetable category. Exporters cannot pass the cost of complying with such a regulation to the consumers as this would end making the products price uncompetitive.

In addition to MRLs, there are a total of 40 market entry regulations which an exporter may be confronted with at the entry port in EU as detailed in annex 14, which comprise customs clearance formalities, ROO (particularly regarding cumulation with non-EU or non-originating country materials), TBT and SPS measures, import licensing, registration, classification, labelling, packaging, and marketing standards. Complying with all the specified regulations translates to substantial financial and technical resources, which an exporter has to incur in order to comprehensibly comply with them with a high degree of confidence. It is also worth noting that the number of specified regulatory measures differs amongst the various categories of vegetables and fruits exported to EU, as defined measures are specified for each product category classified at the HS 6-digit level. This limits the vegetable and fruit categories that a single exporter can confidently export to EU. Accessing the HS system may not be easy for small and even for some large-scale exporters, yet an exporter has to understand the system in order to search for specific measures applicable on each product targeted for export to EU. Thus while EU clearly states that its Member States do not apply NTBs on imports, and that the market entry regulations only aim to protect the health and life of consumers, animals, plants and the environment from harmful risks, the applicable measures actually end up as market entry barriers. In addition, there are other EU regulations on certain categories imported goods which are subject to import and possible intra-EU transfer restrictions; including: regulations for waste disposal (Regulation (EC) 1013/2006); and use of certain chemical substances and mixtures (Regulation (EC) 1272/2008).

3. Interceptions

An Interception is a punitive action taken at the port of entry in the importing country on imported produce. The consignment may be destroyed, shipped back to the origin country, or treated at the destination at the exporter's cost.

The most common reasons for interception are detection of harmful organisms on fresh produce, wrong documentation, or the produce exceeding specified MRLs. Time and money are lost in the process with dire consequences to the exporter. The frequency with which various species of harmful organisms were found on Kenyan exports of fresh produce to EU during the period July 2018 to March 2021 is summarised table 5 below.

Table 5: Frequency with which harmful organisms were detected on fresh horticultural exports (2018-2022)

HARMFUL ORGANISMS DETECTED (JULY 2018- MARCH 2021	PERCENTAGE
Spodoptera frugiperda	9.3
Spodoptera littoralis	9.3
Thaumatotibia leucotreta	14.7
Bemisia tabaci	13.3
Liriomyza huidobrensis	10.7
Tephritidae	10.7
Liriomyza	12.0
Liriomyza sativae	10.7
Thrips	8.0
Scirtothrips aurantii	1.3

Source: Fresh Produce Exporters Association of Kenya (FPEAK), 2021; quoted in "Improving Access to Export Market for Fresh Vegetables through Reduction of Phytosanitary and Pesticide Residue Constraints"; by Geraldin M. W. Lengai, Alex M. Fulano and James W. Muthomi

4. Traceability

Traceability refers to the process of tracing the producer of fresh produce which is rejected due to exceeding MRLs in the country of origin and is therefore a fundamental consideration in exporting fruits and vegetables. The process involves the use of unique codes to identify blocks of land, individual farms, farmer groups, brokers, packers and processors. For example, each crate of avocadoes has its own unique code which identifies the parcel/s of land in which the produce was grown in case of a rejection/ interception in the EU. Most produce in Kenya is not traceable due to reliance on brokers to collect harvested produce from farmers for onward delivery to an exporter.

Since brokers source from a large and ever-changing pool of suppliers, some who in turn purchase from other brokers, traceability of producers who flout MRL tolerance limits becomes very difficult. The GOK through the former Horticultural Crops Development Authority (HCDA) *(currently the HCD, a directorate of AFA)* in the early 1990s introduced the requirement for exporters to comply with the international food safety standards demanded by target export markets as part of efforts to adopt traceability systems. More recently, the Agriculture and Food Authority (AFA) has developed the National Horticulture Traceability System under KS1758-2, which will eventually have to be used by all formal-sector firms that sell, process, or produce food (https://socaa.or.ke/wp-content/uploads/2023/08/Traceability.pdf). KEPHIS additionally conducts regular ad-hoc monitoring and surveillance farm missions to ensure quick resolution of MRL related challenges, and to enable efficient traceability whenever interceptions occur in an export destination market. The issue of concern however is that the costs of such visits are borne by exporters; while the KEPHIS intermittent farm visits due to shortage of human resources limits capacity to address insufficient capacity of farmers to comply with MRL tolerance limits.

5. Application of Private Sector Standards

The mushrooming of Private Sector Standards Organization (PSSOs) is an issue of concern to fresh produce exporters, particularly because such standards (such as GLOBALGAP and EUREGAP) and other market entry requirements applied in the EU markets are too stringent. The private standards are introduced by coalitions of major retailers which exist in both EU and UK (which alternatively appear as standards setting bodies; hereafter referred to as PSSOs).

They continuously introduce new standards which are additional cost to exporting fresh produce, and act as market brokers by introducing audit procedures on their standards. The PSSOs charge annual approval/certification fees from producers and exporters of horticultural produce for their alleged services in certifying that specified standards are applied by producers and the products are therefore safe for entry and consumption in EU and UK markets. Some of the PSSOs have even opened offices in Nairobi to enable periodic farm audits on how their standards are applied.

Strictly speaking, the agenda pursued by the retailer coalitions comprises non-trade issues, including among others respect for labour and human rights, gender balance and sensitiveness, non-use of child labour, safeguards against climate change and environmental degradation, and corporate social responsibility in fresh produce farming. There is also a growing global debate on minimising "carbon footprints" and the associated "food miles" in fresh produce and agriculture production which has been picked by PSSOs as part of standards followed in food production. It is nevertheless noted that provisions on respect for human rights and climate change are generally reflected in the EU/UK EPAs with Kenya. Any producer and/or exporter who contravenes the requirements set by the PSSOs is subjected to denial of market entry since the coalitions influence how and from whom major supermarket chains in EU/UK procure their goods of trade from. Supermarkets which ignore advisory services from such PSSOs often suffer from bad press, thus forcing them to procure from recommended importers.

Therefore the private standards of PSSOs end up as market entry barriers because although they do not appear in official legislations, they greatly influence international trade in horticultural produce (including from Kenya) by acting as fresh produce market drivers. Some retailers in EU/UK additionally use the PSSO labels as marketing strategies in efforts to outcompete their market competitors. The marketing constraints caused by PSSOs are often brought to the attention of GOK authorities, but there is limited recourse due to insufficient resources to address the concerns. The alternative opportunity to raise the concerns in international forums by GOK agencies is also limited by the insufficient budgets allocated to such institutions, which affects ability to attend such meetings. As part of international efforts to come to an agreement on whether and how to apply private standards, the WTO SPS Committee has repeatedly discussed whether private standards should be incorporated into the SPS Agreement, and WTO Members remain divided on the subject. Some trade officials, particularly from high-income and developed countries, express the view that buyers should be allowed to set standards on the products they purchase, meaning this is a legitimate private sector concern which governments should not interfere with. They additionally argue that exceeding official food safety requirements does not result in any violation of national or international laws, and that there could be benefits for producers who meet higher requirements as they will be assured of reliable and consistent sales. Other trade officials (particularly from developing countries) express a contrary view, arguing that the WTO SPS Agreement makes governments in importing countries as the responsible entities for setting of standards that should consequently be applied by their economic operators (including importers such as supermarket chains). The developing countries additionally maintain that private standards contravene the WTO provisions on transparency and scientific justification of food safety measures; and thus end up being more trade-restrictive than necessary to protect health. The developing countries thus conclude that all governments should take actions to limit the ability of the private sector to set food safety requirements that go beyond official regulations on food safety. Thus the debate on setting and application of private standards on food items (incl. fresh produce) is complicated, but the concern is the adverse effects they cause on market entry into markets of high-income countries which are high interest to Kenya.

While large producers and supplierscan generally afford to implement the private standards and make the necessary organizational changes and technological upgrades, small and medium-sized producers exporters face challenges in implementing the private standards and third-party certification because they are costly to develop, maintain and monitor. EU retailers and distributors also hire services of third-party auditors who are perceived as more competent than those from developing countries to conduct firm level inspections. The outcome is that there are few local certifiers in Kenya who can offer international certification. Investments to facilitate implementation of the private standards and third-party certification is also too costly, resulting in small-scale farmers and exporters being pushed out of the market. The Organization for Economic Co-operation and Development has also reported that the costs to upgrade a farm to meet GAP requirements are major obstacles to exportation *(Jai Mei Soon and Richard N. Baines: Public and Private Food Safety Standards: Facilitating or Frustrating Fresh Produce Growers?*). In addition, private food retailers and distributors in developed economies such as EU have no interest in understanding the struggles which suppliers go through in order to comply with the adopted private food safety standards.

6. **Inability for Kenya to issue Notifications**

Strictly speaking, notifications are not NTBs but are procedures for enabling resolution of trade disputes among WTO members. The WTO notification procedure requires that if a WTO Member country notes a trade legislation/measure being applied or intended to be introduced by another WTO Member country which could potentially contain technical barriers to trade, the concerned WTO Member should submit such concern to the WTO Secretariat with an indication of provisions that are in breach of the relevant WTO Agreement. The secretariat then circulates the same to other WTO Members to assess the impact of the legislation/measure on their exports to the country which applies or intends to introduce the procedure, The WTO Members are at this stage given an opportunity to submit their comments within a period of 60 days; during which period, the measure being applied or intended to be introduced is frozen. Economic operators (including industries) are required to include their comments in the national submissions by their countries, including affected or likely products which could potentially be affected. The inability to give notifications translates into NTBs when a country y is unable to produce evidence of adverse impact. Exporters from Kenya and other developing countries find it difficult to issue notifications and to raise Specific Trade Concerns (STC) due to insufficient financial resources to assess and detail the adverse effects of trade-related regulations/measures applied in their destination markets. Some key concerns for Kenya for example relate to emergency regulations often introduced in key markets such as the EU in the form of changing MRLs. The consequence is that Kenya (as well as other developing countries) find it very difficult to meet the new MRLs as the notifications can come at any time during the growing season of a defined crop (including vegetables and fruits). Currently, exporters complain of stringent MRLs applied in the EU and UK, which for example require that fresh beans and peas in pods should be sampled at 10%, and capsicum at 20% respectively during inspection in the import destination country. The MRL inspection procedure is considered too stringent and time consuming, while the related costs have to be borne by the exporter. However, Kenya lacks financial resources to assess and document the adverse effects of MRLs measures in order to contest them either through the WTO channel or directly to the EC. The same case applies to other measures applied by EU on imported vegetables and fruits detailed in *Annex 14.* A perusal of the ITC[46] Trade Obstacles Alert Mechanism (TOAM) (www.intracen.org/resources/tools/trade-obstacles-alert-mechanism-0) shows that Kenya has never issued any notifications to the WTO with the intention of contesting measures either being applied or intended to be introduced by her lead export markets including the EU, and thus affected exporters continue to suffer without any recourse for corrective measures.

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7. **Market access information and pricing**

   Some Kenyan exporters (especially small-scale) face challenges in accessing real time market information in EU markets (contacts of buyers, seasonal prices, changes in market entry regulations, etc.). Regarding changes in market entry regulations, delayed dissemination of information on pesticides which have been banned in Europe means Kenyan producers continue using such chemicals in growing fruits and vegetables, which consequently leads to rejection of the produce in EU. The prices offered in EU and UK markets are also considered uncompetitive and not commensurate with the long sea distance from Kenya to the intended markets (such counties in Northern and Western part of Europe - Spain, Germany, Sweden, Norway, Denmark, and Portugal).

8. **Competition for EU Markets**

   Currently, there is serious competition for the EU markets from Peru and Colombia. EU customers prefer avocadoes from Peru and Colombia due to a perception the produce is of higher quality than varieties procured from African countries. This is a serious risk to future of Kenya's avocados in EU markets, but the GOK is not addressing it by supporting fresh produce groups/ associations with provision of branding materials and export promotion platforms. It is therefore necessary for GOK to strengthen foreign missions in lead export destinations such as EU to ensure efficient export promotion activities are conducted as an ongoing concern. It is also necessary for GOK regulatory agencies to programme and implement market-specific measures focusing on ensuring GAPs are implemented in farms, and to conduct due diligence on credible customers in the target markets.

2.4.2.5 The EU framework for resolving trade barriers

The EU-EAC EPA does not provide an explicit mechanism for resolving NTBs which may be encountered on EAC (Kenya) exports to EU. The EPA however provides that any trade obstacles will be dealt with through the WTO TBT notification mechanism, although in most cases Netherlands, France, and Germany are noted as countries that take an interest to resolve trade obstacles faced during imports clearance whenever they are reported. Nevertheless, the absence of a defined mechanism/system for resolving trade obstacles in the EU-Kenya EPA implies Kenya would therefore have to apply the WTO dispute settlement procedures whenever an NTB is faced. The WTO procedure requires that a WTO Member country which is affected or likely to be affected by a trade legislation/measure being applied or intended to be introduced by another WTO Member country should submit a notification of such legislation through the WTO Secretariat; which thereafter circulate the concerned legislation to all WTO members with a requirement that they should submit their comments within a period of 60 days. The WTO Members are at this stage given an opportunity to assess the impact of the legislation/measure on their exports to the country introducing the measures and to comment and indicate provisions that are in breach of the relevant WTO Agreement. For EU, the EU TBT Enquiry Point uploads the submitted notification and the description of the measure on its dedicated database as soon as it is informed of the proposed measure which is under contention, whether such measure is being applied in EU or in other countries. The EU TBT Enquiry Point then contacts the notifying country to request the whole text of the measure, and thereafter submits its comments to WTO Secretariat for circulation to other WTO members. Based on WTO Members comments, a ruling by the WTO Dispute Tribunal is made regarding whether to retain or withdraw the measure by the applying or introducing country.

Since the EU-Kenya EPA does not provide for an explicit provision for resolving NTBs, this implies that any trade obstacles which may arise during the EPA implementation will have to be dealt with through WTO dispute settlement procedures; which is more complicated and time consuming.

2.4.2.6 Priority measures which should be addressed to facilitate increased Kenyan exports of vegetables and fruits to the European Union

The main priority areas that need to be addressed to ensure increased exports of Kenya fresh vegetables and fruits to EU markets include Protocols on:

1. Completion of detailed protocols related to implementation of all the Agreement's provisions, including
   - Provisions governing trade and investment opportunities for Kenya and EU businesses,
   - Provisions governing agriculture, industrial development and diversification of trade,
   - Provisions governing trade and sustainable development,
   - Provisions governing implementation and monitoring,
   - Technical Barriers to Trade to specify product quality requirements (standardisation, quality assurance, metrology and testing procedures and services), which is aligned with the WTO TBT Agreement,
   - Application of import tariffs in EU and EAC, covering the applicable customs valuation method, anti-dumping measures, anti-subsidy or countervailing measures, and safeguard duties,
   - Application of Rules of Origin, covering the wholly obtained criteria, the goods sufficiently transformed criteria and cumulation provisions, duty drawback criteria, direct transport or non-manipulative rules, and
   - Sanitary and Phytosanitary Measures, covering limitations on use of pesticides (Maximum Residue Levels (MRLs), avoidance of contaminants, the microbiological criteria, and plant health and phytosanitary regulations.
2. Development of a detailed business guide on applicable official mandatory and private standards applied on imported fresh vegetables and fruits in EU and Member countries under the EEC trade regime. This is aimed at helping Kenyan producers and exporters to navigate through all the market entry requirements to reduce rejections and interceptions.
3. Development of an NTBs reporting, monitoring and elimination framework/ mechanism modelled on the similar mechanism applied by the Tripartite RECs (EAC, COMESA, SADC) or the ITC Trade Obstacles Alert Mechanism (TOAM) (www.intracen.org/resources/tools/trade-obstacles-alert-mechanism-0); aimed to facilitate speedy elimination of identified and reported NTBs and other market access and entry barriers including the stringent private standards applied in EU Member States.
4. Development and implementation of a fresh produce sensitisation programme to be funded under the EU-EAC EPA Development Cooperation Framework; focusing on ensuring the recommended business guide is efficiently applied by producers/ exporters of fresh vegetables and fruits, and facilitating producers/exporters to build comprehensive knowledge of all EU market entry requirements.

2.4.3 Assessment of The United Kingdom Market

2.4.3.1 The UK-EAC (Kenya) Economic Partnership Agreement

Kenya entered into an Economic Partnership Agreement (EPA) with the United Kingdom on 8th December 2020, and ratified the Agreement on 22nd March 2021. The EPA now in force is based on provisions of the EU-EAC EPA of 2014 which has never been fully ratified by the other EAC Member States. This in on account that except for Kenya, the States enjoy the Everything-But-Arms (EBA) preferential tariffs in the European market. Kenya is categorized as a lower middle-income country and does not qualify for preferential market treatment under the EBA. To solidify Kenya's trading relationship with the EU countries, Kenya was allowed by the other EAC Sates to sign the EU-EPA through decision by the EAC Heads of State Summit on 27th February 2021. The other EAC countries will continue to benefit from their EU EBA preferential tariffs until they ratify the Agreement. Similar arrangements apply to the UK-EAC EPA, which was concluded after the United Kingdom exited the European Union in 2020. The Brexit necessitated the UK and Kenya to enter into an economic partnership agreement. The UK-EAC EPA borrows heavily from the EAC-EU EPA, where Kenya is the only country which has ratified the Agreement. To ensure harmony in Kenya's trade relationship with both the UK and the European Union, Kenya was therefore allowed to ratify both Agreements to ensure the country does not suffer any trade injury pending the ratification of both Agreement by all EAC countries. Like the EU-EAC EPA, the UK-EAC EPA covers all EAC countries, but currently only applies to Kenya as the only country which has completed the ratification process. It will however be open for other EAC countries to join upon conclusion of their ratification.

The EPA additionally provides that Kenya (as well as other EAC countries when they ratify) should implement a phased liberalization of its market for UK originating goods while retaining tariffs for some goods that are deemed as domestically sensitive. The agreement also provides for trade in fisheries and development cooperation, while trade in services and other areas are to be negotiated under a *rendezvous* clause. The objectives of UK-EAC (Kenya) EPA in the area of trade in goods are to:

1. Provide full duty-free and quota-free market access conditions for goods originating from the EAC Partner State(s) into the UK market on a secure, long-term, and predictable basis.
2. Progressively and gradually liberalize the EAC Partner States' markets for goods originating from the UK.
3. Preserve and improve market access conditions to ensure EAC Partner States fully benefit from the EPA.

The EPA is development focused and is skewed in Kenya's favour. It focuses on facilitating trade in goods, thus guaranteeing continued market access for Kenyan originating goods in the UK market on duty-free and quota-free preferential arrangements after the UK exit from EU. This is a significant commitment as the UK is an important market for Kenya's exports. Based on Kenya's total exports over the period 2018-2022, the UK emerges as the 5th largest export market for Kenya, taking US$ 2.2 billion or 7% of total Kenya's exports, which amounted to US$ 32 billion during the period. The other important export markets for Kenya which outcompeted UK were Uganda (3.56 billion or 11%), USA (US$ 2.7 billion or 8%), Pakistan (US$ 2.6 billion or 8%), and Netherlands (US$ 2.1 billion or 7%). Analysis of trade data for vegetables and fruits show the importance of retaining the duty free and quota free market access provisions for Kenya into the UK market. In this regard;

1. The UK emerges as the topmost important export market for Kenya's vegetables (HS 07), taking US$56.6 million or 44% of total Kenya vegetables exports amounting to US$ 1.3 billion during the period 2018-2022.
2. UK is the 8th most important export market for Kenya fruits (HS08), taking US$ 45.24 million or 4% of total Kenya fruits exports amounting to US$ 1.2 billion during the period 2018-2022. The other important fruits export markets for Kenya during the period were the USA (US$ 241.4 million or 20%), Netherlands (US$ 208.7 million or 17%), UAE (US$ 149.5 million or 12%), France (US$ 91.4 million or 8%), Germany (US$ 72.7 million or 6%), Spain (US$ 71.4 million or 6%), and Saudi Arabia (US$ 66.4 million or 5%).

The UK-EAC EPA contains the provisions elaborated below.

1. Customs Duties and Free Movement of Goods

Kenyan exports to UK are given duty and quota free entry into UK. However, internal taxes, surtax or surcharges applicable on goods produced are equally levied. Also, anti-dumping duties, countervailing or safeguard measures, and trade-related fees and other charges can be imposed on imports. The latter fees and other charges however should not be imposed for consular services and should be limited to the approximate cost of services rendered; and should not represent an indirect protection of domestically produced goods or levied on imports for fiscal purposes.

2. Trade and customs legislation

The UK-Kenya EPA provides that trade and customs legislation applied in UK and EAC aim to: avoid unnecessary and discriminatory burdens on economic operators, protect against fraud and corruption, and facilitate economic operators to meet the high levels of compliance with customs legislation and procedures applied in UK. This will be achieved through:

1. Use of a single administrative document or its electronic equivalent in customs declarations.
2. Application of modern customs techniques; including risk assessment, simplified procedures for import entry and release of goods, post release controls, and audits.
3. The progressive development of systems, including those based on information technology for export/import and transit operations; aimed to facilitate the exchange of information between economic operators, customs administrations, and other border agencies.
4. Application of the principle that penalties imposed for minor breaches of customs regulations or procedural requirements are proportionate and do not give rise to undue delays in their application in customs clearance.
5. Application of a system of binding rulings on customs matters, notably on tariff classification and rules of origin; in accordance with the rules laid down in regional and/or national legislations.
6. Application of fees and charges on trade in goods that are commensurate with the service provided on any specific transaction, which should not be calculated on an ad valorem basis nor imposed on consular services.
7. The elimination of any requirement for the mandatory use of pre-shipment inspections as defined by the WTO Agreement on Pre-shipment Inspection.
8. The elimination of all requirements for the mandatory use of customs brokers, as well as transparent, non-discriminatory, and proportionate rules for import licensing.
9. Application of transparent and efficient customs operations which:
   - Use simplified and standardised documentation and trade formalities to enable the rapid release and clearance of goods.
   - Provide effective, prompt, and non-discriminatory procedures enabling the right of appeal against customs and other border agency administrative actions, rulings and decisions relevant to imports, exports or goods in transit; which are easily accessible to all enterprises.
   - Ensure that integrity is maintained through the application of measures reflecting the principles of the relevant international conventions and instruments.

3. Rules of Origin

The rules of origin provides that vegetables and fruits shall be considered as originating in an EAC Partner State and therefore eligible for duty and quota free entry into the UK if they are wholly obtained in an EAC Partner State; meaning they should be grown, harvested, or gathered in an EAC Partner State. The summary below shows the eligible vegetables and fruits considered as EAC originating to qualify for duty and quota free entry into UK.

HS HEADING	DESCRIPTION OF PRODUCT	Working or processing carried out on non-originating materials that confers originating status for EAC Partner State(s) exports to the UK
Chapter 07	Edible vegetables and certain roots and tubers	Manufacture in which all the materials of Chapter 07 used must be wholly obtained
Chapter 08	Edible fruit and nuts; peel of citrus fruits or melons	Manufacture in which all the edible fruit, nuts and peels of citrus fruits or melons of Chapter 08 used must be wholly obtained and the weight of sugar used does not exceed 40% of the weight of the final product

4. Non-Tariff Measures

All prohibitions and/or restrictions on the Kenya exports to the UK, other than domestic taxes, fees, and other charges, were to be eliminated upon the entry into force of the UK-Kenya EPA whether such prohibitions/restrictions are imposed through quotas, import or export licenses or other measures. No new measures are to be introduced on Kenya exports into UK. These provisions are supposed to be reciprocated by Kenya on imports from UK, except prohibitions or restrictions temporarily applied by Kenya on exports to UK which aim to prevent and/or relieve critical shortages which may arise on foodstuffs and other products essential to Kenya. The EPA through Article 20, Title II on Non-Tariff Measures provides that internal taxation and regulations applied by the UK on imported goods from Kenya should observe the following requirements:

1. The UK will not subject products originating from Kenya to internal taxes or other internal charges in order to protect domestic producers; either directly or indirectly in excess of those applied on like domestic products produced in the UK.
2. Products originating from Kenya shall be accorded treatment no less favourable than treatment accorded to like domestic products produced in the UK in respect of laws, regulations and requirements affecting UK internal sale, offers for sale, purchase, transportation, distribution, or use. However, this provision does not prevent the application of differential internal transportation charges, based exclusively on economic transport operations but not on the origin of the product.
3. The UK shall establish and maintain internal quantitative regulations on the mixture, processing or use of products supplied from domestic sources. However, this provision excludes payment of subsidies derived from proceeds of internal taxes, charges and subsidies offered to national producers through governmental purchases of national products. The provision also excludes laws, regulations, procedures, and practices governing public procurement in UK.

5. Sanitary and Phytosanitary Measures (SPS)

The Agreement provides for application of SPS measures in line with the WTO SPS Agreement, the Codex Alimentarius Commission, the World Animal Health Organisation (WAHO) and the International Plant Protection Convention. The application of SPS measures aim to:

1. Facilitate the inter-regional trade (between UK and EAC) and intra-regional trade (between EAC States), whilst safeguarding human, animal and plant health or life in accordance with the WTO SPS Agreement.
2. Address problems arising from SPS measures on agreed priority sectors and products, while giving due consideration to regional integration.
3. Establish procedures and modalities to facilitate cooperation between UK and EAC countries in SPS matters.
4. Ensure transparency of SPS measures applicable to trade between UK and EAC countries.
5. Promote intra-regional harmonisation of measures with international standards in accordance with the WTO SPS Agreement, and to facilitate the development of appropriate policies; and legislative, regulatory and institutional frameworks within the EAC Partner States.
6. Enhance the effective participation of the EAC Partner States in the Codex Alimentarius Commission, World Animal Health Organisation and International Plant Protection Convention.
7. Promote consultation and exchanges between the EAC Partner States and UK institutions and laboratories.
8. Facilitate the development of capacity for setting and implementing regional and national standards in accordance with international requirements in order to facilitate regional integration.
9. Establish and enhance the EAC Partner States' capacity to implement and monitor SPS measures and promote technology transfer.
10. Ensure that the introduction, alteration or modification of any SPS measure in UK and EAC are based on scientific justifications in compliance with the WTO SPS Agreement.
11. Achieve harmonisation of rules and procedures used in UK and EAC countries for formulation of SPS measures; including inspection, testing and certification procedures, in accordance with the WTO SPS Agreement. The Agreement provides that the Committee of Senior Officials shall develop modalities to assist and to monitor the process of harmonisation of the SPS measures.
12. Apply the principles of equivalence according to the provisions of the WTO SPS Agreement. For this purpose, UK and EAC countries will give reasonable access to their competent authorities to inspect and test each other's relevant SPS procedures based upon request.
13. Recognise (on a case-by-case basis) designated areas which are free from pests and diseases and/or areas of low pest and disease prevalence, in line with the provisions of the WTO SPS Agreement;
14. Ensure that each of the signatory parties inform each other of any changes in its SPS import requirements which may affect exports to each other's customs territory (e.g. the UK as the importing country should inform EAC as the exporter of changes in its SPS requirements; and vice versa). The UK and Kenya as the current signatory parties are also required to establish mechanisms for the exchange of SPS information, about any changes in their SPS import requirements whenever such changes occur.
15. Ensure that information sharing and consultations on changes to SPS measures which may affect products of export interest to either Party include: (a) rapid alerts, scientific opinions and events based on request; and (b) advance notice on new SPS measures that may affect exports to each other's customs territory.
16. The system of communications will build on existing mechanisms provided under WTO SPS Agreement obligations, including promotion of transparency on sampling, analysis and other actions that may follow official controls on feed and food products.

6. Technical Standards Regulations and Conformity Assessment Requirements

The TBT measures covered by the EPA include the preparation, adoption and application of technical regulations, standards, and conformity assessment, as defined in the WTO Technical Barriers to Trade (TBT) Agreement. The commitments made by UK and Kenya (as well as other EAC countries) aim to ensure that:

1. Technical regulations prepared, adopted, or applied in UK and EAC do not create unnecessary obstacles to trade in accordance with the provisions of the WTO TBT Agreement.
2. The signatory parties will notify and share information about their technical regulations, standards, and conformity assessment procedures; including rapid alerts, scientific opinions and events through their national enquiry points (in the case of Kenya, the NEP is the Kenya Bureau of Standards).
3. The signatory parties will harmonise their standards, technical regulations and conformity assessment procedures.
4. The signatory parties will pursue negotiations aimed to conclude an agreement on mutual recognition of conformity assessment procedures.

7. Trade Defence Measures:

The EPA provides for three types of trade defence measures, namely:

1. **Anti-dumping and Countervailing Measures:** The Agreement provides that the UK and the EAC Partner States, whether individually or collectively, should adopt anti-dumping or countervailing measures in accordance with the relevant WTO agreements. Such measures will be determined in accordance with the non-preferential rules of origin. Implementation of specific measures require that:
   - Before imposing definitive anti-dumping or countervailing duties in respect of products imported from EAC (and vice versa), the UK will consider the possibility of constructive remedies as provided for in the relevant WTO agreements.
   - Where an anti-dumping or countervailing measure is imposed by either Party, there shall be one single forum of judicial review, which includes appeals.
   - Where anti-dumping or countervailing measures are imposed on a regional basis and/or on a national basis, the Parties should ensure that such measures are not applied simultaneously on the same product by regional or national authorities. This implies there if UK applies anti-dumping or countervailing measures on vegetables and fruits originating from Kenya, such measures should not apply on similar products originating from the other EAC countries.
   - The UK as the importing country (and vice versa) shall notify the exporting EAC country (and vice versa) of the receipt of a properly documented complaint before initiating any investigation.
   - The provisions on anti-dumping or countervailing measures should be applied on all investigations initiated after the Agreement enters into force.
   - WTO rules on dispute settlement should be applied on any disputes related to antidumping or countervailing measures.

2. **Multilateral Safeguards:** The EPA provides that although imposition of safeguard measures is allowed under the WTO Agreement on Safeguards, and the WTO Agreement on Agriculture, the UK shall not impose such measures on imports from any EAC Partner State for a period of five (5) years from the date of entry into force of the Agreement, due to the small size of EAC economies. The EPA Council will review the operation of these provisions within 120 days before the end of the 5 year-period, with a view to determining whether to extend the exclusion of safeguards application for a further period, based on the development needs of the EAC Partner States,

3. **Bilateral Safeguards.** The EPA allows the signatory parties to apply safeguard measures for a limited duration after examining alternative solutions. Such measures should be applied only where a product originating in one Party is being imported into the territory of the other Party in such increased quantities and under such conditions as to cause or threaten to cause:
    - Serious injury to the domestic industry producing like or directly competitive products in the territory of the importing Party.
    - Disturbances in a sector of the economy, particularly where such disturbances produce major social problems or difficulties which could bring about serious deterioration in the economic situation of the importing Party; or disturbances in the markets of like or directly competitive agricultural products or in the mechanisms regulating those markets.

The applied bilateral safeguard measures should not exceed what is necessary to remedy or prevent the identified serious injury to domestic industry or economic sector. The EPA provides that the measures applied by the importing country can consist of:

- Suspension of further reduction of the rate of import duty for the product concerned.
- Increase in the customs duty on the product concerned up to the MFN customs duty applied to other WTO Members; or
- Introduction of tariff quotas on the product concerned.

The intended introduction of bilateral safeguard measures should be referred to the Committee of Senior Officials for examination and approval, and thereafter applied for a period of up to 2 years. However, if circumstances warranting continued imposition of the measures continue to exist, the safeguards can be extended for a further period of 2 years.

2.4.3.2 The Trade Regime between Kenya and the UK for fresh vegetables and fruits

Vegetables and fruits imported into the UK from Kenyan are broadly governed by the UK-EAC EPA, which Kenya ratified in March 2021 while other EAC countries are yet to conclude the process. The ratification enables Kenya to export products to the UK under duty free and quota free market access conditions on a secure, long-term, and predictable basis, subject to observance of rules of origin criteria and compliance with other market entry conditions such as SPS measures, quality standards (TBT), and customs administrative procedures among others. The Agreement provides for enhanced customs cooperation and trade facilitation between UK and Kenya through:

1. Strengthened legislation, procedures and administrative processes of relevant administrations.
2. iHarmonisation of customs legislation and procedures.
3. Supporting enhanced cooperation between the EAC customs authorities and other related border agencies.
4. Supporting the EAC Partner States' customs administrations to implement trade facilitation measures and international customs best practices in import, export, and transit trade. The relevant customs processes in this regard include modern customs systems and procedures, reduction of customs clearance time; simplified and harmonised customs procedures and trade formalities

on import, export and transit trade; enhanced regional transit systems; and enhanced transparency in conducting import, export and transit procedures.

In addition, UK applies similar market access conditions as those applied in EU for fresh vegetables and fruits as elaborated below.

1. **Mandatory official requirements**

    1. **Pesticide residues and contaminants**
    Food safety in the UK is monitored by the Food Standards Agency (FSA). Pesticide residues and contaminants are one of the crucial concerns that suppliers of fruit and vegetable in UK must prioritise. The UK follows the EU guideline on MRLs and tolerances limits. However, since the UK is no longer part of the EU membership, it can authorise or ban certain pesticides based on its national policies. In Northern Ireland, the EU law on MRLs on pesticides and contaminants will continue to apply, aimed to safeguard that food suppliers are compliant with hygiene and safety regulations.

    2. **Phytosanitary regulations**
    Fresh fruit and vegetables exporters to the UK must get a phytosanitary certificate on each consignment from the Kenya Plant Health Inspectorate Service (KEPHIS). The certificate is a statement that KEPHIS has officially inspected the consignment and certifies that it is free from pests and diseases and therefore meets the legal requirements for entry into UK. A phytosanitary inspection must take place no more than 14 days before the consignment is dispatched from Kenya. All fresh vegetables and fruits must have the phytosanitary certificate to be allowed entry into the UK except mangoes.

    3. **Labelling rules, quality standards and marketing standards**
    All fruit and vegetables imported to the UK must meet the relevant labelling rules and marketing standards. The UK follows the EU guidelines in specifying marketing standards; and in this respect there are specific marketing standards for 10 types of fresh produce, which are graded on quality as either "Extra Class", "Class I", or "Class II". Extra class is superior quality produce which is regular in shape and appearance and with very slight defects; Class I is good quality produce that has minor defects to the skin or shape; while Class II is reasonably good quality produce that may have one or more defects such as some bruising, damage or change in colour. All goods that meet any of the three Specific Marketing Standards (SMS) also need a Certificate of Conformity before they can enter the UK. The importer is responsible for acquiring the certificate; and Kenya HCD (AFA) has been designated as the issuing authority on behalf of UK importers.

    4. **General marketing standards**
    Products under the general marketing standards do not need to be graded into quality classes, but they must be: of intact sound quality (for example, not rotten, severely bruised or severely damaged); clean; free from pests; free from damage caused by pests which may affect the freshness of the produce; free of abnormal external moisture; free from foreign smell or taste; sufficiently developed or ripe but not overdeveloped or overripe. In addition, the Codex Alimentarius provides a set of voluntary food standards, guidelines and codes of practice in the international trade of food and agricultural products, which may be a point of reference for exporters, but the food standards in the UK generally go beyond the Codex standards.

2. **Additional Export Requirements**

    1. **UK climate policy:**
    In October 2021, the UK published its green trade strategy, which aims to address environmental issues contained in the trade agreements between UK and its trading partners. This could affect suppliers of fresh produce in terms of expectations on plastic reduction, sustainable production, transport methods, and voluntary eco-labels. Initiatives such as the UK Plastics Pact will help reduce the amount of plastic packaging on supermarket shelves. For suppliers of fresh fruit and vegetables to UK, this is a good indication on how to innovate and explore sustainable packaging options.

2. **Certifications:**
   Private retail standards and social compliance standards are stricter in UK than in the EU countries. An exporter must comply with these strict standards and obtain the most common certifications demanded by UK importers.

3. **Global GAP:**
   Unless an exporter is supplying a typical niche market, application of Global GAP is expected as a minimum requirement for imported fresh fruits and vegetables into the UK. Global GAP was initiated by British retailers before its adoption in EU and is therefore the commonly used standard in UK to guarantee good agricultural practices, product traceability, environmental measures, and responsibility for ensuring the health and safety of employees.

4. **BRCGS:**
   To ensure good practices in food safety, suppliers need to have a HACCP-based food safety management system, which is particularly important for packing and processing facilities. Such management systems should be recognised by the Global Food Safety Initiative (GFSI). The most common system and certification for the UK is BRCGS (British Retail Consortium Global Standards), also known as "British Reputation through Compliance".

3. Private Sector Standards and Code of Practice

The UK is dominated by large retail chains of buyers which have a strong focus on social and environmental conditions in which fresh produce is grown. These retail chains implement Private Sector standards on fresh produce ranging from environment, climate change, and human rights; with the additional emergence of carbon prints also becoming part of such standards. As in the case of EU, the private standards are set by very influential non-governmental bodies/ Private Sector Standards Organization (PSSOs) in determining procurements from import market based on producers' compliance with their standards. The main areas where cases of violations to such standards may occur range from carbon footprint, injuries, death, and other human rights violations. Although the private standards are not legally found in law, the clients for whom they are developed have made them industry norms, which has the effect of doubling the effects of official market access standards, thus translating them into market entry NTBs. Some of the PSSOs even have a presence in the fresh produce originating countries including Kenya, aimed to ensure that producers apply all the required standards on environment, water use, climate change, and human rights. The PSSOs conduct periodic farm visits, and on such occasions use a reporting framework to proof compliance with each standard. Failure to apply the standards ends up into sanctions thus hurting exporters and by extension farmers of fresh produce. For example, Delmonte Kenya Ltd which is a major Kenyan fruit producing company had their products removed from shelves in four major super market chains in UK on account of human rights violations at their Thika farm in 2023 (https://www.grocerygazette.co.uk/2023/06/23/tesco-del-monte-allegations). Kakuzi PLC, another Kenyan large producer of horticultural produce suffered a similar fate in October 2020 on allegations of human rights abuse, where Tesco suspended avocado supply from Kakuzi. The multitude of private standards and retailer requirements have had a growing impact on developing countries' firms' ability to participate in global production and supply chains in fresh produce, which acts as a market entry barrier. While the private standards are often developed by sector-specific consortiums (such as GlobalGAP) or by the civil society, the biggest supermarkets in UK have joined forces in applying them with the intention of accelerating climate actions through their supply chains. Tesco, Marks and Spencer, Sainsbury's, and Waitrose have in this regard all pledged to take action to reduce environmental impacts in fresh produce originating countries, including cutting down on packaging and waste (UK Grocery gazette of 8th November 2022). Examples of the private standards being applied include:

1. **SMETA;**
   which is applied in UK in a similar manner as in EU.

2. **Ethical Trade Initiative (ETI);**
   which is applied by many UK retail buyers which subscribe to the standard; including Aldi, Asda, Co-op, Marks and Spencer, Morrisons, Sainsbury's, Tesco, and

Greencell (a major avocado importer into UK). All these suppliers have adopted the ETI Base Code, which for example is one of the foundations for Sainsbury's supplier policy on sustainable sourcing, while SMETA is used as auditing tool. Some of the ETI members have additionally developed their own private standards which are applicable for different food companies and retail chains, such as:

- The Tesco NURTURE programme, which has become an additional NURTURE Module to the Global GAP audit.
- All direct suppliers to Marks and Spencer (M&S) are expected to sign up to the M&S Global Sourcing Principles, which stipulates minimum standards for people working in the supply chain. The M&S Field to Fork farming standards cover labour standards, sustainable sourcing, and farm environment standards; written in partnership with LEAF.
- The Unilever Sustainable Agriculture Code (SAC) and the Unilever Regenerative Agriculture Principles (RAPs) provide the basis for Unilever's sustainable sourcing programme and thus governs the multinational's imports of large quantities used in processing vegetables and fruits.

4. Requirements for Niche Markets

Some environmental and fair-trade labels are currently being applied on a limited number of products in the UK market; including the LEAF marque, Rainforest Alliance and Fair Trade International.

1. **The LEAF Marque:**
   The LEAF Marque (Linking Environment And Farming) is an assurance system for sustainably farmed products with an integrated farm management (IFM) approach. The marque has the most impact on British farms. For example, Tesco is implementing the LEAF Marque aimed to improve environmental standards with 14,000 growers worldwide by the year 2025. Other retailers such as Aldi UK and Waitrose have certified large part of their UK-grown produce. In January 2022, the British branch of supermarket Lidl announced plans to help all British suppliers of fresh produce achieve LEAF Marque certification by the end of 2023. For produce grown outside of the UK, Lidl retains the GLOBALG.A.P scheme.

2. **Rainforest Alliance:**
   For some buyers of fresh fruit and vegetables, the current sustainability standards do not go far enough, and Rainforest Alliance for example has already built a name in the banana trade based on its label, and new products such as avocados are being added onto the label, making it an increasingly important new standard for entry into UK market.

3. **Fairtrade:**
   Fairtrade labels are mainly related to the banana trade. For example, one in three bananas bought in the UK is Fairtrade certified, and nearly all large retailers in the UK sell Fairtrade labelled bananas. For other products, the Fairtrade label is less developed, but when used it becomes a marketing tool for fruits and vegetables targeting niche markets such as tomatoes, green beans, oranges and grapes, and green beans.

Organic certification is also gaining traction in the UK, although at a smaller pace than in EU markets, taking a market share of less than 2% in 2019, growing to 5.2% in 2021 according to the Soil Association Organic Market Report of 2021. All organic goods imported into UK from non-EU countries must have a valid GB Certificate of Inspection.

5. **Marketing channels for fruit and vegetables**

The UK has both mainstream and specialized market channels, with supermarkets dominating the fresh vegetables and fruits market. For example, over three quarters of the fresh produce retail sales are attributed to supermarket chains, with the largest market shares being taken by Tesco (28%), Sainsbury's (15%), and ASDA (14%); while discount stores such as Lidl and Aldi have a market share of around 14%. The presence of supermarket outlets is expected to expand at the expense of hypermarkets and conventional supermarkets. Through direct sourcing and low budget concept, the large supermarket chains can maintain lower prices than other smaller supermarkets. The strong competition between discount supermarkets is expected to keep pressure on future price levels. Low prices however do not affect the quality requirements as the discount supermarkets maintain very strict quality standards. Specific target groups such as the high-income groups and consumers of organically grown fresh produce are reached through specialised importers, wholesalers and supermarkets, with the latter selling most of the organic produce (64.5%). Retailers who are specialised in organic foods include Planet Organic; an organic supermarket that sells online and through retail shops in London, and RealFoods, an organic natural food retailer in Edinburgh. The food market however seems to have a low adaptation to organic foods.

Convenience stores and specialised retail outlets represent a much smaller share of the fresh produce market, and the number of specialised retailers has been declining in the last decade. For example, there were about 3,467 greengrocers in UK in 2011, but this number declined to 2,481 in 2019. Although the number of specialised shops is becoming smaller, the outlets are still relevant for certain fruit and vegetables consumed by specific target groups such as older people. For example, much of the ethnic vegetables are sold by small shops, and older generations still prefer street markets which mostly supply fresh produce to local neighbourhoods. Some of the well-known specialised stores are Budgens, Spar and Londis, from whom an estimated 12% of British shoppers buy their vegetables and fruits.

The COVID-19 pandemic also accelerated the growth of online sales and interest in consumption of local fresh produce, making the UK currently one of the leading countries in Europe for online shopping of groceries. For example, according to eMarketer, e-commerce accounted for 14.8% of total grocery sales in the UK in 2022. Most supermarkets also have established web shops with delivery services for online shoppers, while fully online grocery stores such as Ocado, Fresh Direct, and Amazon Fresh have also emerged since the onset of COVID-19 pandemic and most shoppers now prefer online shopping than before the pandemic. The projection by the online grocery stores is that the online grocery segment will continue to grow to 19.5% of total shoppers by 2025. This implies that new distribution centres can be expected to emerge, and that potential online clients will continue to rise due to convenience of online shopping.

2.4.3.3 Trade Enabling Conditions in the UK market for fruits and vegetables

1. **Historical and language relationships between Kenya and the UK**

The interactions between Kenya and the UK have a long history which dates back to 1888, when the British East African Company was granted a charter to manage administrative affairs in Kenya, leading to colonization of present-day Kenya. However, the company soon got bankrupt and the British Government took over administration of the colony with the intention of using it as a gateway to enable exploitation of minerals in Uganda, Buganda and Bunyoro Kingdoms (present day Uganda). To subdue the colony, the British authorities forcibly made Kenyan indigenous people subjects of the British Government in order to guarantee free labour to British settlers. In June 1920, Kenya and the other East Africa countries were declared British Colonies and Protectorates. The colonial rule continued until Kenya attained independence from Britain in 1963 (along with the other East African countries also gaining independence in the same period). The Kenya-Britain relations have continued after independence particularly through the Commonwealth of Nations framework where 55 countries that were colonies of Britain cooperate with each other on political, economic and cultural matters of mutual interest to promote peace and prosperity.

Kenya retains many aspects of British culture and governance structures experienced during the colonial period, such as the continued use of English as the official language for administrative, education and law functions; traffic regulations (such as driving on the left side of roads), religion (with Kenya having a large population of protestant believers), and application of quality standards adopted from Britain for use in industrial processes. Kenya and the UK also continue to relate through co-hosting a large population of diaspora communities; in military affairs (where the UK continues to play an important role in training of military personnel while Kenya hosts the UK's largest training base in Africa); and the UK provision of vital anti-terrorism training to the Kenyan police. Also, the British Royal Family, in particular the late Queen Elizabeth II had very close personal ties to the country, as she was in Kenya when she received news that her father King George VI had died, which endeared her to the country, thus giving her a reason to make multiple state visits to Kenya throughout her reign. Recently in November 2023, the newly inaugurated King Charles of Britain visited Kenya, which was his first visit to Africa since ascension to the throne in 2023. British tourism (with over 100,000 British people visiting Kenya's national parks ever year to view wildlife), finance (such as Standard Chartered and Absa Bank, formerly Barclays Bank), and British multinational businesses (such as Unilever, British Tobacco (BAT), East African Breweries, GlaxoSmithKline, ACTIS (formerly CDC Capital Partners), De La Rue etc.) additionally continue to make significant contributions to the Kenyan economy.

Looking ahead, the UK has committed to continue supporting Kenya's developmental aspirations in key sectors of education, trade, telecommunications, agricultural and manufacturing sectors. Through the Foreign Commonwealth Development Office (FCDO)[47], the UK Government supports Kenya to achieve its development priorities as set out in the Government of Kenya's Vision 2030, which aspires to promote political and macroeconomic stability, sustained economic growth, and social development; underpinned by rapidly expanding infrastructure and inclusive growth led by private sector and improved service delivery.

The UK has also committed that between 2020 and 2025, it will cooperate with African countries across 5 pillars - mutual prosperity, security and stability, sustainable development, climate change, and people to people cooperation. As part of fast-tracking realisation of the **first pillar** (mutual prosperity), the UK launched an initiative in January 2020 worth £400 million through UK aid for African countries, which has the potential to generate substantial investment and trade opportunities for African countries. Such investment is expected to pay close attention to product quality improvements, environmental, and social and corporate standards as part of measures to ensure sustainable growth.

47. Formerly the Department for International Development (DFID)

This initiative, combined with the delivery of ongoing business reforms in Kenya, will build on the over £1.35 billion private British investment into Kenya as stated by UK Government at the UK-Africa Investment Summit held on 20th January 2020.

Pillar 2 is expected to build on the success achieved under the High-Level UK-Kenya Security Compact, thus enabling the UK-Kenya Strategic Partnership to add impetus to the joint efforts to tackle global terrorism, violent extremism, organised crime, and corruption. The UK and Kenya Governments also to jointly cooperate in reducing local, regional and international drivers of conflict; and strengthen democratic institutions and their longstanding defence cooperation.

On Pillar 3 (sustainable development), UK has committed to help Kenya to reduce extreme poverty and create a more prosperous, safer, and healthier country by supporting measures focused on building political stability, tackling inequality, and strengthening government systems and institutions. Climate change under **Pillar 4** is recognised as a defining challenge facing policymakers. The Pillar consequently commits the UK and Kenya to demonstrate global leadership on climate and environmental issues by deploying expertise on climate finance, resilience and adaptation, renewable energy, biodiversity, and science and technology, which in turn will be expected to contribute to creation of green jobs and to facilitate peer learning.

On Pillar 5, it is recognised that the UK and Kenya's people-to-people links are rich and plentiful. The Pillar therefore focuses on harnessing and expanding relationships and alliances in skills development, education, science and research, innovation, and entrepreneurship, defence and security, and arts, culture and sports. The UK-Kenya Strategic Partnership is therefore expected to get stronger as it is based on both shared history and a clearly laid out plan for future relationships. Such "soft infrastructure" ties are key trade enabling factors that guarantee successful market access for Kenya's originating goods in the UK market, and resolution of trade disputes whenever they occur.

2. Air and sea transport to the UK market

Kenya has fair sea connections to the UK which are served by several shipping companies. The country possesses a basic freight rail infrastructure (SGR from Nairobi to Mombasa), while the UK has outstanding rail infrastructure which makes connectivity to inland cities/towns easy and efficient. The quickest method for shipping fresh produce (particularly fresh vegetables) from Kenya to UK markets has traditionally been through airfreight from Nairobi Jomo-Kenyatta-International airport to Heathrow airport, and then road delivery from Heathrow to London. The route's total transit time is estimated at around 7 days, including loading and unloading operations at origin in Kenya and destination as well as terminal handling in London. For fruits, sea freight has been the preferred mode of transport due to the bulky nature of products. The travel distance shows:

1. **Air Transport:**
   The flight time between Nairobi (NBO) and London Heathrow (LHR) is around 13 hours and covers a distance of around 6,842 km. Airfreight services are operated by Kenya Airways, British Airways, Lufthansa and other major flight carriers; all which provide refrigeration services in order to preserve fresh produce. Typically, a total of 186 flights run weekly.

2. **Sea Transport:**
   The sea freight distance between Kenya (Mombasa) and the UK (Port of Liverpool) for a cargo ship is 7,108 Nautical Miles (13,164 Km), which takes 28 days. The freighters provide refrigerated containers to preserve fresh produce.

3. The UK population, GDP and GDP per capita as trade enabling factors for Kenyan vegetables and fruits exports

The UK population was recorded at 67 million people in 2022 by the United Nations International Trade Centre, which was almost a constant annual figure since 2018, while the county's population grew at an almost 0% during the period 2018-2022 (www.intracen.org). The total population in the largest city (London) stood at 9.54 million in 2022, which was about 17% of the country's total population, while the population living in urban areas with more than 1 million was 28% of total population in 2022, growing slightly from 27 million in 2021. The total population between Population ages 15-64 is about 63% of the total population, which can be expected to be the population segment with high spenders on imported goods.

In 2020/2021, an average of 2.4 kilograms of fresh and processed fruit and vegetables were consumed per person per week in UK households in 2021 (www.statista.com), which works out to an average 161,000 tonnes of fresh produce consumed per week. Other UK economic indicators as provided by the World Bank through its World Development Indicators (www.worldbank.org) show that:

- The country's GDP is very high, growing from US$ 2.9 trillion in 2018 to US$ 3.07 trillion in 2022. Although the UK GDP is below the US average GDP of US$ 14 trillion and China's average GDP of US$ 10 trillion during the period 2018-2022, it is similar to Japan's average GDP of US$ 3 trillion and slightly above Germany's average GDP of US$ 2.5 trillion, it still gives a clear indication that UK has high purchasing power for both domestically and imported goods
- The country's GDP grew by 2% in 2018 and 2019, declined substantially by 11% in 2020, and then picked to 8% in 2021 before dropping to 4% in 2022. The substantial drop in the GDP annual growth can directly be attributed to effects of COVID-19 pandemic which ravaging for countries worldwide. Nevertheless, the UK growth rate is way below that of Guyana which is the best performer worldwide, growing at an average 26% during the period 2018-2022, and slightly below that of Ireland and Timor both at 9%.
- The country's GDP per capita dropped from US$ 43.31 in 2018, US$ 42.75 in 2020, and to US$ 40.32 in 2022; then increased to US$ 46.6 in 2021 before dropping again slightly to US$ 46 in 2022. This GDP per capita record can be perceived at a high average, as it is below the GDP p.c. for Monaco which stood at an average US$ 92,646 during the period 2018-2022. Other country's with better GDP p.c. than UK are Luxembourg at US$ 66,586, Bermuda at US$ 65,350, Switzerland at 54,265, Ireland at US$ 51,773, and Norway 48,227.
- The country's GDP per capita grew by 1% in 2018 and 2019 before dropping substantially to -11% in 2020; and thereafter picking to a high 8% before again dropping to close at 4% in 2022. This is below Guyana's GDP p.c. growth rate of an average 16% during the period 2018-2022; and within other comparator countries such as Ireland (5%) Timor-Leste (4%), and Marshall Islands (4%). The indication is that UK is a dependable economy in purchasing locally made and imported goods including fresh vegetables and fruits as the economy is growing and stable, although it was shaken by the COVID-19 pandemic period, which was a similar fate for most countries.
- The country's time to complete border entry compliances to import a 20ft container of goods was recorded at an impressive average of 3 hours in both 2018 and 2019. This compares well with the best performers; namely Bulgaria, Greece, and Switzerland; all which have achieved 1 hour for a similar process. Unfortunately, the time record for latter years is not recorded as the World Bank Doing Business Indicators were discontinued. The cost for completing border entry compliances to import a similar container of goods is also not recorded.

All the assessed economic indicators, and the total and urban population give good and encouraging indications that the UK is a good market for Kenya's fresh produce.

4. Participation of UK private sector in business development and international trade agreements

The British private sector is efficiently structured into national umbrella and product-specific business associations, which deal with business development and delivery of business development service to their members as summarised below.

1. **The British Chambers of Commerce (BCC);**
   formerly the Association of British Chambers of Commerce prior to 1996 is the national representative body of 53 chambers of commerce which are spread out across the UK. The chambers represent 50,000 businesses, which the BCC claims employ 6 million people. The organisation was founded in 1860 as the Association of Chambers of Commerce of the United Kingdom and has been involved in lobbying on a range of issues, including intellectual property law, transport, bankruptcy law, trade tariffs, and promotion an adoption of the metric system in trade. During the post-World War 2 period, the organisation was involved in lobbying for the UK to join the European trade area. BCC has been involved in influencing regional economic integration, and in this regard was actively participating in development of the European Economic

Community matters before (EEC), in addition to making inputs to development of bilateral trade partnerships between the EU and third countries before Brexit[48]. The priority which BCC lays to regional and international trade relations is demonstrated by the fact that in 2016, the then Director-General of BCC had to quit his position due his support of Brexit at a time when 60% of BCC members supported continued UK membership to the EU. In the recent past, the BCC has been regarded as less prominent than its rival, the Confederation of British Industry (CBI) in influencing the UK government policy on business development and trade.

2. **The Confederation of British Industry (CBI);**
which is a British business representative organisation comprising about 190,000 businesses, and which is described by the Financial Times as "Britain's biggest business lobby group". Its mission is to promote the conditions in which businesses of all sizes and sectors in the UK can compete and prosper for mutual benefit. The CBI's membership includes companies listed in the Financial Times Stock Exchange 100 Index (FTSE100)[49], mid-caps[50], SMEs, privately owned businesses, trade associations, universities, and other public bodies. CBI membership comprises around 1,500 direct members involved in economic sectors such as agriculture, automotive, aerospace, construction, creative arts, education, financial services, IT, manufacturing, professional services, retail, transport, tourism, and utilities; and about 188,500 non-members who include trade associations, universities and other public bodies which are not directly involved in the CBI's policy formulation. The focus of CBI is promotion of business interests through lobbying and policy advice to the UK and foreign governments, promotion of business networking, offering business intelligence services based on analysis of government policies and compilation of statistics. CBI has its headquarters in London, with regional offices in every region of the UK, including Scotland, North Ireland, and Wales. It has also established offices in Beijing (China), Brussels, New Delhi, and Washington D.C.; an indication of the priority interest it takes in following up trends in economic and business developments in countries where there are UK businesses interests. To this end, CBI publishes numerous reports each year on a wide range of issues of interest and relevance to its members; such as "Future Champions", which aims to promote the contribution and role of mid-sized businesses to economic development in UK and foreign counties; "Industrial Futures", which monitors how government interventions promote business growth; the 2014 report on the need to strengthen UK supply chains; the 'Business Voice' which is a monthly magazine for advising CBI members on economic and business trends worldwide; and 'Intelligence FIRST', an occasional publication that provides strategic guidance for CBI members on regulatory and economic changes taking place in the UK and in UK's foreign trade and development partners. CBI also offers export coaching to businesses wishing to access the European market.

3. **The Federation of Small Businesses (FSB)**
is UK's representative organisation of small and medium sized businesses. It was formed in 1974 as the National Federation of Self Employed (NFSE), and thereafter transformed into FSB in 1991. FSB is focused on lobbying for development and growth of SMEs and the self-employed in the UK and offers its members a range of benefits such as a 24-hour legal advice line and free business banking. FSB claims that its lobbying activities have contributed to changes benefiting small businesses; including:

48. Brexit refers to the withdrawal of the UK from the European Union on 31st January 2020
49. The FTSE 100 Index, is a share index of the top 100 companies listed on the London Stock Exchange with the highest market capitalization (market value).
50. Mid-cap companies are those whose market capitalization ranges between US$ 2 billion and US$ 10 billion. They are sizeable and stable firms with relatively mature business processes and operations.

- The introduction of periodic increases for the employment allowance applicable for small business employers
- Fast introduction and expansion of a range of government support for small businesses and the self-employed affected by the COVID-19 pandemic; including the Coronavirus Job Retention Scheme ('furlough'); the Self-Employment Income Support Scheme (SEISS); and business rates relief and various grants for SMEs.
- The reduction or removal of Corporation Tax for small limited companies
- Creation of small business rates relief
- Preventing the wholesale expansion of VAT to smaller businesses

4. The British horticulture industry associations.

The horticulture industry accounts for about 3% of UK's land area and comprises more than 4,000 growers who produce more than 300 types of vegetables, salads and fruit crops; estimated at Euro 3.6 billion per annum. Most growers produce according to provisions of independent assurance schemes, thus ensuring high standards of traceability, quality, and safety; and compliance with environmentally sustainable methods. Investment in research is highly prioritised and coordinated by the Horticultural Development Division (HCD) of the Agriculture and Horticulture Development Board, which initiates about 75 new projects every year focused on horticulture research with funding through the growers' levy and under guidance by grower and crop associations. The "Grown in Britain - a guide to British Fresh Produce" which is produced by the HCD, represents several horticultural grower groups, with an aim to raise horticulture production standards and to guide grower-funded research and development for the British horticulture industry. The main grower associations which are relevant to the fresh vegetables and fruits segment include:

1. The Asparagus Growers Association, whose aim is to promote the British asparagus season, and the producers of the crop (www.british-asparagus.co.uk)
2. Brassica Growers Association, which represents the interests of broccoli, brussels sprouts, cabbage, cauliflower, and swede growers (www.loveyourgreens.co.uk)
3. British Carrot Growers Association, which represents the interests of growers of carrots and parsnips (www.britishcarrost.co.uk)
4. British Daffodil Growers Association, which aims to raise the profits of British daffodil growers (adrian@lingardenbulbs.co.uk)
5. British Growers Association, which represents the broad interests of horticultural growers and also produces facts, figures and news about horticultural production (www.britishgrowers.org)
6. British Herb Trades Association, which represents producers of medicinal, culinary, garden pot herbs, and essential oils, including herb production, product development, marketing, and other technical issues (www.bhta.org.uk)
7. British Leafy Salads Association, which provides information on growing and harvesting of salad crops (www.britishleafysalads.co.uk)
8. British Onions Producers Association, which aims to improve quality standards and to ensure year-round continuity in production of British onions (www.britishonions.co.uk)
9. British Protected Ornamentals Association, which represents interests of pot plants and cut flowers (www.bpoaonline.co.uk)
10. British Tomato Growers Association, whose focus is to promote growing practices, research priorities, and tomato growers' approach to environmental protection (www.britishtomatoes.co.uk)
11. Cucumber Growers Association, which represent the interests of the cucumber industry (www.cucumbergrowers.co.uk)
12. Horticulture Trades Association, which focuses in developing the garden industry and member businesses (including garden centres, retailers, landscapers, manufacturers, suppliers; and growers).

The horticulture industry associations are expected to protest any laws and regulations harmful to the development of the British horticulture industry, and interested Kenya growers and exporters of fresh produce can consult them whenever they experience obstacles in accessing the UK market. The associations can also lobby for introduction of trade defence measures (such as anti-dumping and anti-subsidies) in cases where dumping and subsidies on imported fresh produce are found to be taking place.

5. **Provision of Business Development Services (BDS) businesses in the UK.**

   Several BDS companies in the UK provide international logistics and supply chain support, consultancy, and market penetration services. These include:

   1. **Accace/Adept;**
      Provides a full suite of accounting, tax compliance and payroll services to support the growth of businesses; in addition to supporting businesses to have an in-depth knowledge of the UK business environment and how to seize business opportunities and navigate the process of starting a business. The company has global teams in Europe and South Africa which support business consulting across various industries and sectors. It provides professional services in:

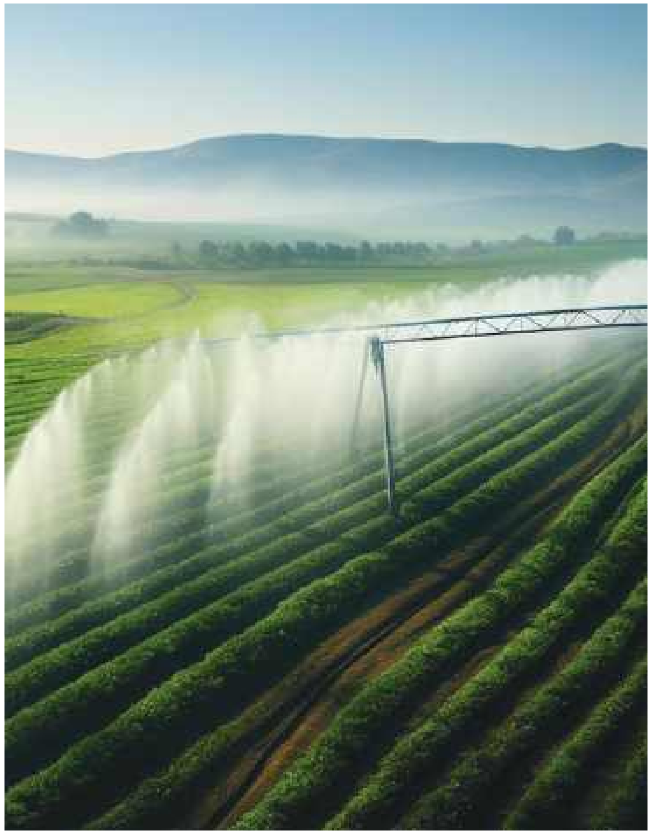
      - Go-to-market research, risk analysis and solution-defining consulting,
      - Understanding the legal framework and local compliance risk exposure,
      - Evaluation of business start-up costs,
      - Business establishment, company registration, set up of the operational structure,
      - Corporate and administrative services for new businesses aspiring to the UK market,
      - Identifying and networking with the right business partners,
      - Due diligence on acquisitions and mergers,
      - Research and definition of potential incentives and statutory framework.

   2. **Practical CFO;**
      offers advisory services on commercial aspects of running a successful business; including strategic planning, implementation of effective systems and financial compliance, analysis and insights in business development, implementation of management structures, and business decision making.

   3. **Virtual Sales' Business Development Services;**
      offers effective BDS services based on the client's business-own data to devise a customer-made business strategies on business development across sectors and within supply chains. The company offers information on global markets, business opportunities, BDS programmes and tender notices across various sectors based on intelligence gathered from its network of national and international contacts, which include Government Departments, Embassies, Economic and Budgetary Reports, Exporting Guides. It also works closely with key government departments and agencies to maximize the potential for a client business to access UK and global markets. Additionally, it supports businesses to grow through "Meet the Buyer Programme" of events that include tailored single buyer engagements, B2B engagements, business development events, and matchmaking of suppliers.

   4. **The BDSPN;**
      a member-based organization composed of accredited trainers which are legally registered.

   5. **Horticulture Associations;**
      offer advisory services in fruits and vegetable imports, including the Vegetarian Society, the Association of UK dietitians, and the Fresh Produce Consortium UK. Such associations can support Kenya exporters on how to access the British fresh produce market and the applicable product-specific retail standards.



2.4.3.4 Export trade barriers facing Kenya exports of fresh vegetables and fruits to the UK

The main concern expressed by Kenya exporters of fresh vegetables and fruits is the increasing application of private standards, including Global GAP, BRCGS, SMETA, and the Ethical Trade Initiative by food distributors and retailers, aimed to ensure food safety, elimination of quality risks; protection against environmental damage, and sustainability of food production systems. They however adversely affect exports by small scale exporters who lack the financial resources to comply with the specified measures. Also, while it is easy to access information on mandatory official requirements such as tolerance limits on pesticide residues and contaminants, phytosanitary regulations, labelling rules, quality standards and marketing standards; it is difficult for exporters to find a comprehensive listing of all the private driven standards, while failure to comply with any specified measure may end up blocking the entry of fresh produce into the UK market.

In addition to affecting small scale exports, the private standards are major market entry barriers for even large Kenyan and relatively well-organized fresh produce suppliers/exporters to the UK market. This is because while the standards are often developed by sector-specific consortiums (such as. Global GAP) or by the civil society, the large supermarkets in UK have joined forces in applying them with the intention of eliminating abuses to labour, and accelerating climate actions through their supply chains. Tesco, Marks and Spencer, Sainsbury's, and Waitrose have in this regard pledged to take action to reduce environmental impacts in fresh produce originating countries, including cutting down on packaging and waste *(UK Grocery gazette of 8th November 2022)*. Although the private standards are not legally found in law, the clients for whom they are developed have made them industry norms, which has the effect of doubling the effects of mandatory official market access standards, thus translating the standards into market entry barriers (NTBs). Some of the private standards setting bodies have established presence in exporting countries such as Kenya, aimed to ensure that producers apply the required environment standards (such as water use, climate change), and respect for human rights. The personnel designated by such bodies make regular farm visits to track whether producers are in compliance with given standards, and failure to proof compliance with a given standard ends up into market entry sanctions for the violating exporters. The main areas where cases of violations to the required standards are reported range from carbon footprints; injuries and death or farm workers; and other human rights violations. Some examples where Kenya large exporters have allegedly violated specified private standards leading to sanctions against UK market entry include:

- Delmonte Kenya Ltd, a major fruit producing and exporting company had their products removed from shelves in four major super market chains in UK on account of human rights violations at their Thika farm in 2023 (https://www.grocerygazette.co.uk/2023/06/23/tesco-del-monte-allegations).
- Kakuzi PLC, a large Kenyan producer of horticultural produce (including avocados and fresh vegetables) suffered suspended supply of avocado to Tesco in October 2020 on allegations of human rights abuse.

The multitude of private standards and retailer requirements have a growing negative impact on ability of Kenyan firms to supply major markets like the UK. Despite efforts to harmonize official and private standards into regional EU standards through the EU Common Market framework, the UK instead decided to exit the Common Market, thus forcing Kenya as well as other exporting countries to incur extra costs of investing into institutional structures that facilitates compliance with standards applied by two major markets for Kenyan fresh produce. It is also notable that the UK as well as the other European market is very diverse in terms of consumer preferences, structural dynamics, and strict attention to enforcement of food safety, environmental, sustainability and social standards. An array of factors has influenced leading Kenyan fresh produce suppliers to re-position themselves to efficiently implement quality assurance and food safety systems in order to overcome export challenges such as high international freight costs, the emergence of increased competition from countries like Peru for the UK as well as EU markets for mainstream product lines like avocados, and the increasing build-up of strong market relationships between retail chains. The Kenya initiative however entails substantial investment in modern production and procurement systems, upgrading of pack houses with cold storage facilities, and strict implementation of quality assurance/food safety management systems; all which are beyond the reach of Kenyan small-scale exporters. Thus, the capacity challenge facing small scale exporters should be addressed to facilitate their integration into international value chains, including in the UK and EU. In addition to market entry obstacles created by private standards, exporters of fresh produce face the following difficulties in UK:

1. **Exports to the UK face multiple taxation**

   As the UK-EAC (Kenya) EPA did not specify how Kenya originating products exported to UK should be treated when they are re-exported to EU countries after certifying they comply with the specified ROO. In this regard, such Kenyan originating goods which are re-shipped to EU markets from UK are currently treated as having originated from UK, which means they effectively attract import tariffs in EU. This problem commenced after Brexit, although based on UK ROO, such products are Kenyan originating and should be treated as such. The same case applies on goods destined to EU but later re-shipped to UK, which are treated as EU originating and thus attract import duties. The complicated matter of the possibility to have Kenyan originating goods being given preferential tariffs in EU or UK needs to be urgently addressed to enable preferential tariff treatment to apply either in UK or EU as long as the goods meet UK of EU ROO; based on agreement that both EU and UK should be regarded as transit regions whenever transhipment or re-exports occur, and that only transit fees should apply in such cases.

2. **Capacity building activities (including training) funded by taxpayers in UK**

   Which are supposed to benefit Kenyan producers often end up benefiting large producers. The financial support often availed by UK with the intention of supporting small-scale fresh producers would have been expected to bridge the funding deficit faced by Kenyan regulatory agencies (KEPHIS, HCD, PCPB), thus enabling regular farm-level surveillance on prevalence of pests and establishment of timely corrective mitigation measures. The case of mangoes is an appropriate example, since this fruit is often attacked by fruits flies which lodge themselves inside the fruit at its formative stage, making it very difficult to detect the pest during the fruit's growth stage. Detection of the pest at the UK of entry during inspection results to a whole consignment of mango fruit being condemned. Kenya should prioritise surveillance and mitigation measures aimed to eliminate harmful pests as part of capacity building activities for farmers of fresh produce.

3. **Other market entry obstacles encountered**

   Include use of poor packaging for mangoes and avocados, and externalities which broadly affect international trade in goods; such as political interests and business rivalries aimed to protect UK domestic producers, thus ending up restricting ability of Kenyan originating fresh produce to access the UK market. The later political/business interests are often driven by product-specific associations discussed above.

2.4.3.5 Priority measures that should be addressed to facilitate increased Kenya exports of vegetables and fruits to the United Kingdom

The priority measures which need to be addressed to enable Kenya to increase exports of fresh vegetables and fruits to the UK include:

1. **The need to complete negotiations on the protocols that should form annexes to the UK-EAC EPA.** The Protocols will specify detailed rules and regulations governing the Customs Measures (tariff classification, customs valuation, co-operation between UK and EAC/Kenya Customs Administrations, re-exportation of goods, clearance procedures on imports, duty refunds and remissions, etc.); Rules of Origin, TBT, SPS, Trade Defence Measures (anti-dumping; subsidies and countervailing measures), and the NTBs Elimination Framework among other priority areas). This is because the current EPA gives the broad framework for UK-EAC/Kenya trade relations but not the specific measures on how various provisions related to the implementation process will apply.

2. **UK and Kenyan finance institutions should support Kenya producers and exporters of vegetables and fruits to scale up their farm-level infrastructure necessary to conduct large commercial transactions.** This includes supporting small and medium scale producers to consolidate their produce into reliable and cost-effective transactions which can be shipped to UK markets; assisting producers to build technical expertise in understanding and complying with UK MRL, traceability, packing, and labelling regulations.

3. **The Kenya and UK Governments should support fresh produce growers and exporters to overcome trade infrastructure and logistics bottlenecks.** This would reduce the cost of production, thus enabling Kenya to increase price competitiveness and efficiency in handling trade logistics.

4. **The Kenya and UK Governments should support producers/exporters in their value-addition initiatives aimed to produce shelf-stable products**, such as powdered vegetables and fruit juices that will not require expensive airfreight to the UK market.

5. **The Kenya and UK Governments should support certified processing zones** to pack fresh produce which complies with the high-quality standards demanded by UK importers.

6. **The Kenya and UK Governments should support Kenyan producers to meet the environmental, social and governance standards** (including efficient us of water, compliance with labour standards, and environmental safeguards), which have become the norms in the fresh produce trade. This would build on Kenya's competitive advantages in fresh produce exports while enabling Kenyan producers to align with the growing demands of UK consumers, investors, and regulators[51]

2.4.3.6 The UK framework for resolving trade barriers facing Kenyan fresh vegetables and fruits

The UK-EAC (Kenya) EPA provides that trade disputes arising during application of SPS, TBT and Trade Defence Measures are to be dealt with in accordance with the relevant WTO mechanisms. However, the UK-EAC (Kenya) EPA through Article 29 also provides for establishment of a Special Committee on Customs and Trade Facilitation (SCTF), which will be chaired alternately by the signatory Parties. SCTF will report to the EPA Council on the outcome of its meetings. The specific functions of SCTF will include:

1. Monitoring the implementation and administration of the rules of origin;
2. Providing a forum for consultations on issues relevant to customs, including rules of origin, general customs procedures, customs valuation, tariff classification, transit and mutual administrative assistance in customs matters;
3. Enhancing cooperation on the development, application and enforcement of rules of origin, customs procedures, and mutual administrative assistance in customs matters;
4. Enhancing cooperation on capacity building and technical assistance; and
5. Any other issues agreed by the Parties in respect of matters relevant to customs and trade facilitation.

51. Refer to the detailed case study on "increasing UK-Kenya trade and investment in the horticulture sector" www.gov.uk)

Thus, although there is no evidence of an explicit mechanism in the EPA specifically focused in resolving export trade barriers, a channel exists through the SCTF for resolving trade obstacles related to customs which may be faced by Kenya businesses in the course of exporting to the UK. This channel expressly applies to issues which may be faced on administration duty exemptions, rules of origin, customs administrative procedures, customs valuation, tariff classification, and transit trade (for example if goods are transported through UK and onwards to EU countries). Based on the provisions of the WTO Agreement on Trade Facilitation which entered into force in 2017, the areas where SCTF will additionally be responsible for ensuring efficient administration include: ensuring speedy movement into the intended UK markets, release of goods from the port of entry and customs control, and clearance of goods at the port of entry; aimed to reduce the time and costs which may delay clearance of Kenya exports to UK. The Committee will also be responsible for ensuring the simplification, modernization, and harmonization of import, and transit processes.

The EPA also provides for establishment of an UK-EAC EPA Consultative Committee, the Committee of Senior Officials, and the EPA Council as organs responsible for overseeing implementation of the Agreement, including matters relevant to trade disputes. The EPA Consultative Committee will specifically be responsible for assisting the Committee of Senior Officials in promoting dialogue and cooperation between representatives of the private sector, the civil society, the academic community, and social and economic partners. Such dialogue and cooperation shall include matters arising during the implementation of the Agreement. Membership to the EPA Consultative Committee shall be decided by the EPA Council upon recommendations from the Committee of Senior Officials, with a view to ensuring a broad representation of all interested parties. The Committee of Senior Officials will be responsible for:

1. Receiving and considering reports of specialised committees, working sessions, task forces or any other bodies which it may establish, and making appropriate recommendations to the EPA Council for action;
2. Supervising the implementation and proper application of all Agreement's provisions;
3. Undertaking actions to avoid and resolve trade disputes which may arise regarding the interpretation or application of the Agreement's provisions;
4. Assisting the EPA Council in the performance of its functions, including the submission of recommendations for decisions to be taken by the EPA Council;
5. Monitoring the development of regional integration, and economic and trade relations between the UK and EAC signatory parties;
6. Monitoring and assessing the impact of the implementation of the Agreement's provisions on sustainable development in the territories of the signatory parties; and
7. Discussing and undertaking actions that may facilitate trade, investment, and business opportunities between the signatory parties.

The EPA Council will be responsible for:

1. Overseeing the operation and implementation of the Agreement and monitoring fulfilment of its objectives;
2. Examining any major issues arising within the framework of the Agreement, including questions of common interest affecting trade between the Parties; and
3. Examining proposals and recommendations made by the signatory parties for the review and amendment of the Agreement.

Therefore, although the UK-EAC (Kenya) EPA provides that trade disputes arising under application of SPS, TBT and Trade Defence Measures are to be dealt with in accordance with the relevant WTO mechanisms, it is expected that such disputes will regularly be brought to the attention of the EPA institutions responsible for its implementation, including the EPA Consultative Committee, the Committee of Senior Officials and the EPA Council, which are mandated to monitor and resolve trade disputes arising during implementation of the Agreement; which may include customs administrative processes, SPS, TBT and trade defence measures.

It is recommended that the UK-EAC EPA NTBS resolution framework should be retained as provided in Article 29. However, the application of the mechanism should be sensitised amongst exporters of goods to UK. An online mechanism for reporting trade obstacles also should be established to enable speedy reporting, monitoring, and resolution of such obstacles by the relevant organs (SCTF, EPA Consultative Committee, Committee of Senior Officials, and the EPA Council).

2.4.4 Assessment of The EAC Market

2.4.4.1 Trade Provisions in the EAC Treaty

The EAC Treaty was signed in 1999 with the main objective of assisting the EAC Partner States to attain economic, social and political integration. In this regard, Article 5 (1) of the Treaty specifies that *"The objectives of the Community shall be to develop policies and programmes aimed to widen and deepen cooperation among the Partner States in political, economic social and cultural fields, research and technology, defence, security and legal and judicial affairs for their mutual benefit."*. Article 5(2) further provides for the establishment of a Customs Union to be followed by a Common Market, a Monetary Union and ultimately a Political Federation. The Customs Union is provided for in Article 75 while the Common Market is provided for in Article 76 of the Treaty. The Customs Union became effective in January 2005 through the enactment of the Customs Union Protocol, while the Common Market became effective in 2010 through enactment of the Common Market Protocol. These two Protocols are the key pillars of the EAC economic integration process.

The Customs Union Protocol (CUP) provides for the following key elements:

1. The application of the principle of asymmetry;
2. The elimination of internal tariffs and other charges of equivalent effect;
3. The elimination of non-tariff barriers;
4. Establishment of a common external tariff (CET);
5. Rules of origin;
6. Anti-dumping measures;
7. Subsidies and countervailing duties;
8. Security and other restrictions to trade;
9. Competition;
10. Duty drawback, refund and remission of duties and taxes;
11. Customs co-operation;
12. Re-exportation of goods;
13. Simplification and harmonisation of trade documentation and procedures;
14. Exemption regimes;
15. Harmonised commodity description and coding system; and
16. Free ports.

Implementation of the CUP has been ongoing since 2005 guided by the implementation framework provided in the Customs Management Act 2005, which has severally been amended to accommodate emerging concerns of EAC Partner States; such as the application of the Rules of Origin, the CET bands, and elimination of Non-Tariff Barriers (NTBs). The specific provisions of the above 16 CUP elements are elaborated below.

1. Elimination of internal tariffs and application of the principle of asymmetry

Article 11 of the CUP provides for phased elimination of internal tariffs over a six-year period from January 2005 to 2010. The internal tariffs elimination process applied the principle of asymmetry, which provided for a two-tariff structure referred to as Category A and Category B goods. In this regard, as specified under the CUP Annex II, Category A goods were to be eligible for immediate duty-free treatment, while Category B goods were to be eligible for gradual tariff reduction. Category B goods from Kenya to Uganda and Tanzania were to apply a phase-out tariff reduction schedule between 2005 and 2010, culminating into free tariffs on goods traded among the Partner States. When Burundi and Rwanda joined EAC in July 2009, they were required to ascend to the CUP internal tariff arrangements "as is", meaning at the stage they found it. While there were initial teething problems in implementing the CUP internal tariff provisions, the process has to-date been fully accomplished, thus liberalizing the EAC internal trade. South Sudan and Democratic Republic of Congo (DR Congo) later joined the EAC in 2016 and 2022 respectively, although their implementation of all CUP provisions has not been fully accomplished. Somalia also lately joined the EAC towards the end of 2023; effectively bringing the EAC membership to a total of eight countries.

2. Elimination of Non-Tariff Barriers

Article 13 of the CUP provides for immediate removal of all the exiting non-tariff barriers (NTBs) on goods traded among the EAC Partner States, and for Partner States to refrain from imposing any new NTBs. The NTBs in this respect refers to laws, regulations, administrative and technical requirements other than tariffs imposed by a Partner State on goods originating from another Partner State, whose effect is to impede trade. Further, the Article provides for Partner States to formulate a mechanism for identifying and monitoring the removal of NTBs. In this respect, the mechanism was completed in 2017 in the form of the EAC NTBs Act 2017, which is implemented through two main channels, namely:

- The Time-Bound Mechanism, a template through which Partner Sates report NTBs encountered while accessing the regional market into the Tripartite[52] NTBs online system.
- The National Monitoring Committees (NMCs), which meets quarterly to discuss and make decisions on the NTBs reported into the Tripartite NTBs online system.

3. Establishment of a Common External Tariff (CET)

Article 12 of the CUP provides for application of a three-band common external tariff (CET) on goods originating from 3rd countries into EAC, namely (a) 0% for raw materials, agricultural inputs, plant and machinery, and essential drugs; (b) 10% for intermediate goods and semi-finished products; and (c) 25% for finished products, effective from January 2005 and to be reviewed after 5 years. In line with Article 12(3) of the CUP which provides for a review of the of the CET structure to remedy any adverse effects that may arise during its application, the CET rates were reviewed and modified into CET 2007; and further reviewed in 2022 to provide for four CET bands, namely 0% for raw materials and capital goods, 10% for intermediate goods not available in the region, 25% for intermediate goods available in the region but which are imported based on preference, and 35% for imported finished products available in the region. The setting of tariff descriptions is based on the Harmonized Customs Commodity Description and Coding System (HS) which is provided for in Article 8 of the CUP.

4. Rules of Origin

Article 14 of the CUP provides for goods to be accepted as eligible for EAC tariff treatment if they originate from amongst the EAC Partner States; i.e. if they are either wholly manufactured or produced in the Partner States using local raw materials, or under the "substantial transformation" criteria. The detailed framework on the Rules of Origin was concluded in 2015, and it specifically provides 30 Rules and 6 Schedules. Rule 4 of the rules of origin criteria specifies that for goods to be accepted as originating in a Partner State, the goods have to be:

1. Wholly produced in the originating Partner State *(e.g. mineral products, vegetable products, live animals, products manufactured in a factory of a Partner State, and scrap and waste resulting from manufacturing operations)*; or
2. Produced in the originating Partner State incorporating materials which have not been wholly obtained there, provided that such materials have undergone sufficient working or processing in the Partner State. This criterion also specifies that the total value or net weight of the product should not exceed:
   - 15% of net weight of products falling under Chapters 2 and 4-24 of the Harmonized System; or
   - 15% of the ex-works price of products falling under Chapters 2 and 4-24 of the Harmonized System.

For the above two rules to apply, qualifying goods should go beyond: **(a)** simple packaging operations such as bottling, placing in flasks, bags, cases and boxes; fixing labels on cards or boards; **(b)** simple mixing of ingredients imported from outside the Partner State; **(c)** simple assembly of components and parts imported from outside the Partner State to constitute a complete product; **(d)** preservation operations to ensure the merchandise is in good condition during transportation and storage; **(e)** change of packing and breaking up or assembly of consignments; **(f)** marking, labelling or affixing distinguishing sign on products or their packages; and **(g)** other simple processes such as removal of dust, sifting or screening, sorting, classifying or matching, washing, planting or cutting up, ironing, etc. Additionally:

1. Cumulation is allowed as part of defining originating goods; where materials which originate in a Partner State and which undergo working or processing in another Partner State are deemed to have originated in the Partner State where the final working or processing takes place.
2. Materials which originate in a country or a Regional Economic Community that the Community has concluded a Free Trade Area Agreement with, shall be considered as materials originating in an EAC Partner State if the materials are incorporated into goods produced in that Partner State, where the working or processing carried out in that Partner State goes beyond simple operations.

52. The Tripartite comprises COMESA, SADC and EAC RECs; which comprises a total of 26 countries. Tripartite NTBs online system is used commonly within the Tripartite to report on NTBs encountered by individual countries in the course of accessing the regional markets.

3. Materials which originate from a country or a territory benefiting from duty free, quota free access to the market of an EAC Partner State or Regional Economic Community that the EAC has concluded a Free Trade Area Agreement with, shall be considered as materials originating in a Partner State if the materials are incorporated into goods produced in that Partner State, where the working or processing carried out in that Partner State goes beyond simple operations.
4. Non-originating materials which at the time of importation into a Partner State from a third country are free of customs duties as defined under the EAC CET, shall be considered as materials originating in the Partner State when incorporated into goods produced in that Partner State, if the materials have undergone sufficient working or processing beyond simple operations.
5. The Rules of Origin does not apply to materials which at importation to a Partner State, are subject to the CUP Antidumping Measures/Regulations or the CUP Subsidies and Countervailing Measures/Regulations.
6. An exporter who claims that goods originate from an EAC Partner State must make an application by filling in the relevant Rules of Origin form. Such an application should be accompanied by: (a) direct evidence of the processes carried out by the exporter to obtain the goods concerned; (b) documents proving the originating status of materials used which is issued by a Partner State in accordance with the national laws of the Partner State; (c) documents proving the working or processing of materials in the Partner State in accordance with the Partner State's national laws; (d) a certificate of origin proving the originating status of materials used issued by the Partner State (e) any other document as may be required by the Partner State's competent authority.

5. Anti-dumping measures

Article 16 of the CUP provides for application of measures aimed to prevent injury to an EAC Partner State, *if goods imported from a third country causes or threatens material injury to an established industry in any of the Partner States, or materially retards the establishment of a domestic industry or frustrates the benefits expected from the removal or absence of duties and quantitative restrictions of trade between the Partner States.* Such measures relate to a situation where the price of imported goods is less than the normal value of like goods in the market of a country of origin. The EAC Secretariat is also required to notify the World Trade Organization of any anti-dumping measures taken by the Partner States.

To facilitate implementation of the provisions of Article 16, the EAC Partner States have prepared detailed Anti-Dumping Regulations, which form Annex IV to the CUP. The regulations cover procedures for determination of Dumping, determination of injury, definition of domestic Industry, procedures for investigating dumping and production of necessary evidence, imposition and collection of anti-dumping duties, duration of applied anti-dumping duties, requirement for issuance of public notices and notifications to WTO, and levels of consultations and dispute settlement between Partner States and third parties. In EAC, only Kenya has developed a Trade Remedies Law in the form of the Trade Remedies Act enacted on 21st July 2017 and which came into force on 16th August 2017. The Act provides for the establishment of the Kenya Trade Remedies Agency (KETRA) which is responsible for investigating and imposing anti-dumping, countervailing and trade safeguard measures. The Act specifically provides for imposition of anti-dumping, countervailing and safeguard measures. The law defines anti-dumping, countervailing and safeguard measures as follows:

1. Countervailing measures means a special duty levied for the purpose of offsetting any subsidy bestowed, directly, or indirectly, upon the manufacture, production, or export of any merchandise. The Cabinet Secretary is in a case of subsidized goods imported in Kenya, issues a countervailing duty in an amount equal to or less than the amount of subsidy on the imported goods.
2. Dumping means the introduction of a product into the commerce of the country at an export price that is less than its normal value. The dumping margin means the difference between the export price and the normal value as it results from the comparison of the two. The Cabinet Secretary is expected to impose, in the case of goods dumped in Kenya, an anti-dumping duty in an amount equal to or less than the margin of dumping of the imported goods.
3. Safeguard measures means the temporary imposition of a tariff or quantitative restrictions or other necessary permissible measures to prevent or remedy serious injury and to facilitate adjustments of the concerned industry;

The Act also provides for **(i)** Investigations on alleged cases of dumping or subsidized imports into Kenya; and **(ii)** Investigations on alleged cases of imports that have caused, or which threaten to cause serious injury to an industry in Kenya. KETRA investigation officers are mandated to carry out investigations on premises that may be undertaking trade in alleged dumped and/ or subsidised goods. However, KETRA faces a number of institutional challenges which hinders efficient discharge of its mandates, including:

1. Low technical and professional staff capacity for intelligence gathering, analysis and evaluation of the size of the market of imported goods which are dumped, subsidised, under-invoiced, smuggled, and uncustomed, or which cause or threaten injury to domestic industries. KETRA also lacks capacity to identify and document the perpetrators; the products and economic sectors most affected, and the technologies and strategies used by perpetrators to evade detection and capture. Such information is required by the WTO Agreement on anti-dumping and countervailing measures as justification for intention to introduce anti-dumping and countervailing measures by the country whose domestic industries may be affected by dumping and subsidies.
2. Insufficient financial resources to implement programmes for building stakeholders' awareness about the adverse effects of dumped, subsidised, under invoiced, smuggled, and uncustomed, and other goods which are imported in large consignments thereby causing threats to continued existence, competitiveness and profitability of domestic industries.
3. Poor inter-agency coordination and collaboration in the fight against trade malpractices (including dumped, subsidised, under invoiced, smuggled, and uncustomed and trade in counterfeited goods). Poor collaboration between agencies involved in approving an export and import (KRA[53] Customs, KPA[54], KEBS[55], and KETRA among others), hinders efficient sharing of information on incoming imports and outgoing exports to determine genuine from fake trade.
4. Corruption and porosity of Kenya's extensive borders, with at least five countries sharing land borders with Kenya (Tanzania, Uganda, South Sudan, Somalia, and Ethiopia); which ends up enabling entry, exit and transit of smuggled, under-invoiced, uncustomed and counterfeit goods.
5. Negative and hostile attitude towards KETRA by buyers (consumers) and sellers (traders) who perceive the Agency as an inhibitor rather than a promoter of fair trade. This hinders efficient protection of human, animal, plant safety and health, and the environment.

The above examples demonstrate the need to provide adequate and sustainable funding to KETRA to enforce the trade remedies law as part of measures to efficiently conduct investigations, intelligence gathering, analysis, and evaluation of alleged cases of dumping, subsidies and under-invoicing as required by the relevant WTO Agreement.

6. Subsidies and other countervailing duties

Article 18 of the CUP provides for imposition of countervailing duties (penalty duties) on imports that are subsidized by third country governments. It further elaborates that the applied countervailing duty should be equal to the amount of the estimated subsidy determined to have been granted directly or indirectly on the manufacture, production, or export of the concerned product in the country of origin. The EAC Partner States have drawn detailed Subsidies and Countervailing Measures/ Regulations to be used against cases of subsidies on products imported into the region, which forms Annex V to the CUP. The regulations define subsidies and countervailing measures, the types of subsidies *(prohibited, actionable, and non-actionable subsidies)*, procedures and conditions for Imposition and collection of countervailing duties, procedures for notifications to WTO secretariat and surveillance on subsidy cases, procedures for investigations and preparation of evidence, and responsibilities of various players. It is notable that no cases of subsidies have been reported by Kenya since the coming into force of the EAC CUP.

7. Security and other restrictions to trade

Article 22 of the CUP provides for EAC Partner States to introduce or continue to execute restrictions or prohibitions to trade in respect of: **(i)** application of security laws and regulations; **(ii)** control of arms, ammunition and other military equipment or items;

53. Kenya Revenue Authority
54. Kenya Ports Authority
55. Kenya Bureau of Standards

(iii) protection of human life, the environment, and natural resources; public safety, public health or public morality; and **(iv)** protection of animals and plants. The provisions also require that Partner States should specify goods to be restricted and prohibited from trade through their national customs laws.

8. Competition

Article 21 of the CUP provides for EAC Partner States to prohibit any practice that prevents, restricts or distorts competition within the Community, except in special cases. The implementation of this Article is based on the EAC competition policy and law; and on national laws which among other things prohibit restrictive trade practices and control of monopolies. To implement these provisions, the EAC enacted the EAC Competition Policy and Law in 2006. The law overrides domestic law on cross-border trade, aimed to promote fair trade practices in line with best international practices.

Increased competition among domestic firms for the regional market arising from implementation of internal taxes has benefited East Africans through better quality products, choice of broader range of goods, and is expected to lead to lower prices. Implementation of the competition law and policy will lead to a larger market for national firms, including SMEs. Some manufacturing firms in the region have benefited from the phased removal of internal tariffs by widening the markets for their products.

9. Duty drawback, refund and remission of duties and taxes

Article 26 of the CUP provides for establishment of duty drawback schemes as an integral part of export promotion schemes. Further, the Customs Management Act of 2005 provides guidance on modalities of handling remission and exemption of import duty given at national level to deserving export-oriented firms. There is a general agreement among Partner States that in the long run, countries should work towards reduction of duty exemptions and remissions for goods traded within EAC to enhance fair competition for firms trading across borders. The main challenge in administering of duty drawbacks and remissions relates to considerable delays experienced in processing duty remissions (such as on VAT paid on imported raw materials used for exports), which leads to holding up of scarce and expensive working capital. There are also cases of abuse of the schemes by some unscrupulous individual firms who claim refund after offloading alleged exported products into the domestic markets, leading to unfair competition for firms that operate within the law with regard to payment of import duties on raw materials.

10. Customs cooperation

Article 4 of the CUP provides for co-operation by Partner States on customs and trade management including:

- Trade liberalization; simplification and harmonization of trade documentation, customs regulations and procedures, tariff classification, collection of customs duties, temporary admission of goods, warehousing, cross-border trade and export drawbacks;
- Trade remedies and the prevention, investigation, and suppression of customs offences;
- National and joint institutional arrangements; and training facilities and programmes on customs and trade
- Production and exchange of customs and trade statistics, information, and promotion of exports;
- adoption of uniform, comprehensive and systematic tariff classification of goods in accordance with internationally accepted standards;
- A standard system of valuation of goods based on the principles of equity, uniformity and simplicity in accordance with internationally accepted standards and guidelines;
- Use of common terms and conditions governing temporary importation procedures including list of goods commonly traded and the nature of manufacturing or processing;
- Harmonised customs requirements on re-exportation and transit of goods; harmonization and simplification of customs, trade formalities, documentation, and dissemination of information;
- Harmonised customs requirements for the control of warehoused goods; and adoption of common procedures for the establishment and operation of export promotion schemes and free ports.

Some notable achievements on customs cooperation are annual production of trade reports, holding of joint training facilities and programmes on customs and trade matters, and joint institutional arrangements. Some challenges have been faced on customs cooperation, including:

- Cooperation in the areas of trade remedies and the prevention, investigation, and suppression of customs offences. The Partner States are still pursuing their individual approaches regarding investigation and suing of offenders who contravene customs law such as smuggling.
- Training facilities and programmes on customs and trade are not yet harmonised into regional ones.
- Production and dissemination of coherent and comparable trade statistical information is a major challenge as trade statistics are reported using national currencies, which is a challenge in comparing trade performances as trade data must be converted into international currencies whose rates change on a daily basis; resulting to conflicting trade data sets.
- The aggregation level of the published trade data is too broad to be used for meaningful analysis of intra-EAC trade development, which would entail categorisation of goods at the HS 6-digit level.

11. Re-exportation of goods

Article 23 of the CUP provides that "Partner States shall exempt re-exports from payment of import or export duties in accordance with the customs law of the community". However, the levying of normal administrative and service charges is still applicable on import and export of similar goods at the individual national level in accordance with the national laws and regulations. There are however cases on diversion of re-exports into the domestic markets. In this respect, some unscrupulous firms take advantage of the weak monitoring and follow up system by EAC customs authorities to sell re-exports into the local market while such goods have been waived from import duties, thus outcompeting national producers.

12. Simplification and harmonisation of trade documentation and procedures

Article 7 of the CUP provides for Partner States to simplify their trade documentation and procedures to facilitate efficient cross border trade. This includes design and standardisation of trade information and documentation in accordance with internationally accepted standards and developments in the use of electronic data processing systems; aimed to ensure efficient and effective application of the CUP and adoption of harmonised customs documentation as specified in the Customs Management Act (2005).

Progress achieved in the implementation of this provision has been slow since the envisaged standardisation of trade information and adoption of harmonised customs documentation by all Partner States has not been achieved. Computerization of customs documentation is also at different stages of implementation in individual Partner States. For instance, the Kenya Revenue Authority (KRA) in 2019 introduced the Integrated Customs Management System (iCMS), aimed to consolidate customs systems/processes into a single modern, robust, and efficient system with capability to seamlessly interface with other internal and external systems as need arises. The iCMS is perceived as a game changer in Customs processing as it aligns customs operations with international best practices and improves ease of doing business in Kenya and in the EAC region in line with the WTO requirement for the simplification and harmonization of international trade procedures. The system replaced the Simba system which used to run on a multiplicity of sub-systems that required multiple points of authentication of imported cargo, thus taking more time in clearing imports. It is envisioned that iCMS system will reduce clearance time for imports and exports by at least 60 per cent, thus enabling exchange of Customs declaration information with the Automated System for Customs Data (Asycuda) used by the other EAC Partner States; an issue which previously was a high concern in the region particularly for the landlocked countries which rely on the Mombasa Port for their imports and exports (Burundi, DR Congo Rwanda, Uganda, and South Sudan). In addition to contributing to prevention of possible diversion of transit goods into the local markets and disappearance of containers, iCMS will enable auto-uploading of cargo import data from shipping manifest into import entries, thus preventing import falsification by traders, while allowing for less paperwork, faster clearance, and time and cost savings in business transactions. It is not yet clear whether iCMS and Asycuda will eventually be harmonized as originally envisaged in order to cater for traders' concerns regarding compatibility of customs systems in online sharing of customs data, risk management, and clearing of exports and imports made by credible traders who are currently authorised to operate under the Authorised Economic Operator (AEO)[56] Programme. It is also not clear when the varying documents used by Partner State in trade transactions (import and export) will be harmonized as provided by the CUP in order to overcome impediments to efficient intra-EAC trade.

13. Exemption/remission regimes

Article 33 of the CUP provides for Partner States to harmonise their exemption/remission regimes with respect to goods that are excluded from payment of import duties, which are specified in the customs law of the Community. In addition, the Customs Management Act (2005) provides guidance on modalities of handling remissions and exemption from import duty.

The manufacturing sector has been the main beneficiary of duty remissions and exemptions across all the Partner States, with exemptions given as incentives to promote exports and to increase foreign investment. However, the process is yet to be harmonized as clear guidelines haven't been concluded regarding pursuance of a regional approach in promoting exports and foreign investment. There have been instances where provision of company specific exemptions has created tension within the business community. There is general agreement that in the long run, Partner States should work towards reduction of exemptions and remissions from duty on imported inputs used to process exports outside the Community. In the meantime, Partner States have continued utilising national exemption regimes.

14. Harmonised commodity description and coding systems

Article 8 of the CUP provides for Partner States to harmonise their customs nomenclature and to standardise their foreign trade statistics to ensure comparability and reliability of trade information; and to adopt the Harmonised Commodity Description and Coding System specified in Annex I of the CUP. However, while Partner States have adopted the harmonized commodity description for goods imported into the region, the business community have experienced problems related to customs nomenclature and commodity descriptions. In particular, the harmonized coding system is too broad at HS 6-digit level to describe products, and manufacturers are particularly of the view that the HS 8-digit level should be adopted as the better method for describing specific products as is the practice in the EU[57] countries. This is because some imported commodities are sometimes wrongly classified, leading to incorrect levying of import duty rates. The generalization at HS 6-digit level also provides loopholes for firms to declare their goods as raw materials to pay lower duty rates, while others are forced to pay higher rates on their raw materials/inputs based on claim by Customs officials that the goods are finished products while they are intermediate goods.

15. Free ports

Article 31 of the CU Protocol provides for the establishment of free-ports in order to facilitate and promote international trade. The free ports in this respect should provide storage and warehousing based on simplified customs procedures, thus enabling goods entering such facilities to be granted total relief from payment of import duty and other import levies unless they are removed from the premises for domestic market.

As part of export promotion efforts, Partner States have set up Export Processing Zones (EPZs as provided for under Article 29 of the CUP, in which firms can import raw materials/inputs free from import duty if such materials are used to process exports.

56. The AEO Programme allows credible importers and exporters to seamlessly clear their transactions without the need for physical customs inspection. Customs authorities thereafter conduct post import/export processes including collection and waiver of applicable duties and taxes, which saves qualified businesses substantial clearance time compared to normal transactions. Users of the AEO are qualified based on their track record in importation and exportation of high-risk consignments.

57. European Union.

The Manufacturing-Under-Bond (MUB) scheme also operates in Kenya, Uganda, and Tanzania, allowing for importation of duty-free raw materials/inputs by firms which process exports and goods for home use. The main challenge for EAC countries is to control duty free goods from entering into the domestic markets of Partner States; which would bring unfair competition for domestic manufacturers.

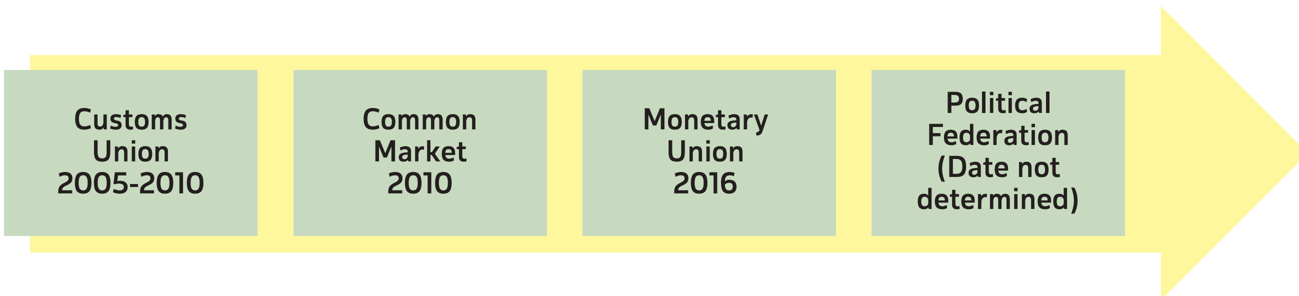
The Common Market is provided for in Article 76 of EAC Treaty and was achieved through establishment of the Common Market Protocol (CMP) in 2010. The CMP aims to widen and deepen cooperation among the EAC Partner States in economic and social fields, and incorporates all the CUP elements and additionally provides for implementation of the following elements within the Community:

1. Free trade in goods
2. Free trade in services
3. Free movement of capital
4. Free movement of persons and labour,
5. The right of establishment and
6. The right of residence.

2.4.4.2 The EAC Trade Regime for Kenya vegetables and fruits exports

An exploration of the background to the EAC economic integration agenda as articulated in the EAC Treaty and accompanying instruments shows that the EAC economic integration process is based on clearly specified goals relating to trade and investment, monetary and fiscal policy, and labour and capital markets. This is the trade regime that applies on Kenya exports to Uganda and South Sudan, which emerge as the lead EAC markets for Kenya exports of vegetables and fruits. After concluding the EAC Treaty, the Partner States adopted a phased approach to the regional integration process, which incorporates establishment of a Customs Union in 2005, a Common Market in 2010, and a Monetary Union in 2016. The first two stages have been achieved while negotiations are underway on the third stage. Negotiations on the goal of having a Political Federation are on hold pending conclusion of the third stage. Figure 1 below illustrates the EAC economic integration process.

Figure 1: EAC Economic Integration Stages/pillars



The provisions contained in the first two stages of the EAC economic integration stages define the current EAC trade regime as they specify the intra and extra regional trade provisions as summarised in Table 6 below. The trade-related provisions in the first two stages are complemented by provisions of the EAC Customs Management Act (ECMA) 2005; and by other provisions specified in the NTBs Act 2017, the SQMT Protocol 2006 and SAC Protocol 2016, the SPS Protocol 2013, and the EAC Competition Policy. Discussions are underway on the EAC Monetary Protocol, the EAC trade remedies Act; and modalities of treating goods destined to EAC markets if they originate from export processing zones and Special Economic Zones. The provisions contained in these latter frameworks will also become part of the EAC trade regime when they get concluded.

Table 6: Key EAC Trade Provisions

THE EAC TREATY PROVISIONS	INTRA- REGIONAL PROVISIONS	EXTRA- REGIONAL PROVISIONS
Customs Union Protocol (2005)	1. Elimination of internal tariffs on intra-EAC traded goods (i.e. duty-free and quota-free movement of tradable goods among Partner States) 2. Elimination of NTBs on goods traded amongst Partner States 3. Common External Tariff (CET) for imports from third party countries 4. Common Rules of Origin (ROO) 5. Common safety measures for regulating importation of goods from third parties, including phytosanitary requirements and food safety standards 6. Common set of customs rules and procedures including documentation specified in the Customs Management Act (2005) 7. Common customs coding and description of tradable goods (Common Tariff Nomenclature – CTN) 8. Common valuation method on tradable goods for tax (duty) purposes 9. A structure for collective administration of the Customs Union through the EAC Customs Management Act 2005 10. A common trade policy to guide trading relationships with third countries/trading blocs outside the Customs Union (incl. guidelines for entering into preferential trading arrangements with third parties (such as Free Trade Areas)	Countries outside the EAC region shall not benefit from internal tariff reduction as provided for by Articles 11 and 14 of the CUP.
Customs Union Common External Tariff (CET)	1. Internal tariffs on intra-EAC trade were removed in 2010 and a 3-tariff band CET structure was set in place; which was further revised to a 4-tariff band CET in 2022 to provide for: i) 0% for raw materials and capital goods, ii) 10% for intermediate goods not available in the region, iii) 25% for intermediate goods available in the region but which are imported based on preference, and iv) 35% for imported finished products available in the region. 2. The goods traded under the 4-tariff band CET structure must meet the rules of origin (see below). 3. The CUP provides for the following sensitive goods list: i) 59 tariff lines on goods considered sensitive by each Partner State ii) The sensitive goods list is mostly for goods that attract the highest rate of 35%	The 4-tariff band CET applies on goods imported from outside the EAC region.
Customs Union Rules of Origin (ROO)	The purpose of the ROO is to implement the provisions of Article 14 of the CUP, which provides for Partner States to ensure uniformity in application of rules of origin that are transparent, accountable, fair, predictable and consistent and in line with the WTO agreement on rules of origin. Products manufactured or sourced from outside EAC are subject to applicable CET rates.	Imports of goods originating from third countries into the EAC region will be subject to applicable CET tariff rates, based on the WTO ROO agreement.
Common Market Protocol	The CUP is part of measures to implement the EAC Treaty (Article 76 of the Treaty). The CMP aims to facilitate and guarantee implementation of the following provisions: 1. Free movement of goods across EAC customs territory 2. Free trade in services across EAC customs territory 3. Freedom of movement of capital across EAC customs territory 4. Freedom of movement of labour across EAC customs territory 5. The right of establishment and residence	Countries from outside the EAC will not benefit from the CMP provisions as spelt out in Article 76 of EAC Treaty.

Table 6: Key EAC Trade Provisions

THE EAC TREATY PROVISIONS	INTRA- REGIONAL PROVISIONS	EXTRA- REGIONAL PROVISIONS
Monetary Union	The objective of the Monetary Union is to promote and maintain monetary and financial stability in EAC in order to facilitate economic integration and attain sustainable growth and development of EAC Partner States. The Monetary Union is subject to the following convergence criteria: ***Macroeconomic convergence criteria*** 1. Ceiling on headline inflation at 8% 2. Ceiling on fiscal deficit, including grants at 3% of GDP 3. Ceiling on GDP debt at 50% of GDP in Net Present Value 4. Reserve cover of 4.5 months of imports ***Single Currency*** 1. The Partner States shall adopt a single currency. 2. The single currency will be adopted by at least 3 partner states in order to be used as legal tender. 3. The Partner States which adopt the currency shall form the single currency area. 4. The single currency shall be used in settlement and payment of trade transactions by members of the single currency area.	After the implementation of the MU EAC non-members will be required to conduct further transactions as per the new single currency.
EAC Customs Management Act (ECMA) 2005	ECMA is the major law on customs and revenue in EAC and therefore governs trade facilitation within the region.	Applicable on CET for imports from third countries
Other provisions of the economic integration process	1. NTBs Act 2017 2. SQMT Protocol 2006 and SAC Protocol 2016 3. SPS Protocol 2013 4. Competition Policy 5. Trade remedies 6. EPZs and SEZ operations NB: The CUP has 15 main elements, all which are considered relevant to the EAC trade regime	EAC trade with third countries is based on provisions of the: 1. WTO[58] Agreement as the overall guiding framework 2. EAC-EU[59] EPA[60] EAC-UK[61] EPA 3. AfCFTA[62] Any other regional and bilateral trade agreements to which Kenya is a signatory country (such as COMESA)

Source: author's summarised version of the EAC economic integration process

58. World Trade Organisation
59. European Union
60. Economic Partnership Agreement
61. United Kingdom
62. Africa Continental Free Trade Area

The key highlights of milestones achieved to-date in the EAC economic integration process as provided in the CUP and CMP summarised in Table 2 above include:

1. Clear elaboration of rules governing intra and extra EAC trade as provided for in the respective Protocols, including CUP, CMP, SACA Protocol 2016, SPS Protocol 2013, and NTBs Act 2017 among others. In this regard, there is optimism that although some challenges remain (especially the continued existence of NTBs and emergence of new ones since the establishment of the EAC Treaty), the economic integration agenda is underway and promising.
2. Active participation by the private sector in the integration processes through regional institutions such as EABC[63] and EACCI[64].
3. Conclusion and implementation of some key provisions of the CUP particularly on: CET, internal tariff arrangements, application of harmonised rules of origin, and elimination of NTBs on intra-EAC trade.
4. Conclusion of the CMP Implementation Plan and the continued tracking of its achievements and results through the East Africa Monitoring System (EAMS).
5. Development of the EAC SQMT[65] Protocol in 2006, and its subsequent revision to SACA[66] in 2016; which has facilitated development and/or adoption of a wide range of quality standards and SPS measures.
6. Conclusion of the NTBs Act in 2017 and its implementation through the Time-Bound Mechanism, the quarterly meetings of NMCs which reviews progress in elimination of reported NTBs and reporting of NTBs encountered in the course of intra-EAC trade through the Tripartite NTBs online mechanism.
7. Establishment of some OSBPs[67] and related IBM[68] systems and procedures with support by TMA (formerly TMEA), World Bank and JICA[69], aimed to reduce the time and cost of intra-EAC trade in goods[70].
8. Continuous joint verification missions between Partner States, aimed to confirm the originating status of goods traded across EAC borders and adherence with the value addition and local content criteria as provided in the EAC Rules of Origin (ROO). This is a key requirement for conferring preferential market access to EAC originating products as provided for under the CUP.
9. Establishment of a Single Customs Territory (SCT) Framework, which aims to facilitate free flow of goods in the Community once applicable import duties and other taxes are collected at the first port of entry into the region; the listing of beneficiary products; and development of the SCT standard operating procedures.
10. Introduction of an EAC Customs Bond, which is implemented as part of the SCT framework and in line with the provisions of the Regional Electronic Cargo Tracking System, aimed to prevent diversion of uncustomed goods into the territories of Partner States.
11. Conclusion of EAC-EPAs with EU and the UK, both of which have been ratified by Kenya.
12. Conclusion of the AfCFTA Agreement, which Kenya and Rwanda among the EAC countries have ratified.

NO.	OSBP	Border Area
1	Elegu/ Nimule	Uganda-South Sudan border
2	Malaba	Uganda-Kenya border
3	Busia	Uganda-Kenya border
4	Mirama Hills/ Kagitumba	Uganda-Rwanda border
5	Mutukula	Uganda-Tanzania border
6	Kobero/ Kabanga	Burundi-Tanzania border
7	Holili/Taveta	Tanzania-Kenya border
8	Namanga	Tanzania-Kenya border
9	Gatuna/ Katuna	Uganda-Rwanda border
10	Tunduma-Nakonde	Tanzania-Zambia border

63. East African Business Council
64. East African Chamber of Commerce and Industry
65. Standards, Quality Assurance, Metrology and Testing services
66. Standardization, Accreditation and Conformity Assessment
67. One Stop Border Posts
68. Integrated Border Management
69. Japan International Cooperation Agency
70. The established OSBPs are listed below:

2.4.4.3 Trade Enabling Conditions in EAC countries for Kenya vegetables and fruits exports (focusing on Uganda and South Sudan

1. **Historical, cultural, geographical, language and trade relationships between Kenya and Uganda and South Sudan**

    1. Kenya-Uganda relations.
    Kenya and Uganda have had bilateral relationships for many years and in many areas; particularly in the areas of trade, infrastructure, security (including military), education, agriculture, and energy among others. The two countries share a long border of approximately 814km. Most cross-border interactions take place along this border, although such interactions are concentrated in the southern region between Lake Victoria and the Mount Elgon National Park region. The major crossing points between the two countries are in the Busia, Malaba, and Lwakhakha border towns.

    From 1961 to 1965, the two states along with Tanzania were united in the East African Common Services Organization, which was a common market with a loose federal structure. The three countries were also founding members of the original East African Community, which later collapsed due to ideological differences and territorial disputes. Thereafter in July 2000, the three countries re-established the EAC with a legal structure in the form of the EAC Treaty 2000, which has contributed a great deal in improving trade and overall relations between Kenya and Uganda. The three countries are also bound by a significant Swahili-speaking population, and additionally share significant cultural similarities.

    For many years, Uganda has been the largest export destination for Kenyan originating goods; taking a total of US$ 8.58 billion or a 12% export share of Kenyan exports during the period 2011 to 2022. In addition, Kenyan firms have established operations in Uganda, including the Kenya Commercial Bank, Equity Bank, and some manufacturing companies such as Bidco Africa (a leading manufacturer of Fast-Moving Consumer Goods).

    2. Kenya-South Sudan relations.
    Kenya has strong bilateral relations with South Sudan in many areas even before South Sudan became an independent state from Sudan in 2011. Prior to the independence of South Sudan, Kenya had hosted a big number of South Sudanese refugees. The relationship between the two countries was strengthened further by the role Kenya played as a mediator in the Sudanese peace process between 2002 and 2005 on behalf of IGAD[71], which culminated in the Comprehensive Peace Agreement (CPA) signed in January 2005 between South Sudan and Sudan in Nairobi (Kenya). The CPA paved the way for the referendum and independence of South Sudan, and remains a symbol for friendship and strong ties between Kenya and South Sudan. The relationship between Kenya and South Sudan has had many benefits for the two States cutting across economic, social and political ties and the stability of the Horn of Africa countries. Both countries have additionally had cultural similarities as many people from South Sudan lived in Kenya before the country's independence in 2011. Culturally, a significant proportion of the Sudanese population has linkages with several Kenyan communities, and thus share languages and culture, which had made it easy for the two countries to establish other relationships at individual and country levels, including trade and business relationships. Indeed, following independence of South Sudan there have been several initiatives aimed at strengthening and formalizing relations between the two countries. Several Kenyan citizens currently reside in Southern Sudan, with many running businesses, offering technical expertise and human resources. In addition, several Kenyan firms have invested in South Sudan.

    In 2016, South Sudan joined the EAC membership, further strengthening trade relations between the two countries as well with other EAC States. Between 2011 and 2022, Kenya exported US$ 2 billion worth of goods to South Sudan, which translates to 3% of its total exports. However, total Kenya exports to South Sudan declined by 6.5% between 2012 and 2022 from US$ 213 million in 2012 to US$ 199 million in 2022. This could be attributed to difficulties experienced in transporting goods to South Sudan due to the dilapidated condition of some sections of the Kitale-Lokichogio road which connects Kenya and South Sudan (refer to section 2.4.4.4 (b) for more details on this obstacle).

71. Intergovernmental Authority on Development; whose membership comprises eight countries in the Horn of Africa; namely: Djibouti, Ethiopia, Kenya, Somalia, South Sudan, Sudan, and Uganda, and Eritrea. Eritrea is however currently inactive. IGAD HQs is in Djibouti.

2. **Transport logistics between Kenya, Uganda, and South Sudan**

Uganda and South Sudan mainly depend on Kenya for movement of their exports and imports with third countries outside the EAC region. Kenya and Uganda are also mainly interconnected through the North Corridor Transport road network which stretches from Mombasa through Nairobi to Kampala and onwards to Kigali in Rwanda. The corridor is estimated at 1,147 Kilometres or about 20 hours from Mombasa to Kampala, and 660 Kilometres (13 hours) from Nairobi to Kampala. For South Sudan, there are three alternative routes for moving imports and exports through Kenya, namely: (i) Mombasa to Juba via Malaba: 1,662 km, (ii) Mombasa to Juba via Nadapal: 1,775 km, and (iii) Lamu to Juba via Nadapal: 1,784 km. In efforts to increase transport and trade efficiency, Kenya and Uganda are building a standard gauge railway link, which is intended to stretch through Mombasa-Nairobi-Kampala and onwards to Kigali in Rwanda. Work began on the Kenyan section of the rail line in December 2014. There have been proposals to expand the Mombasa-Nairobi-Kampala-Kigali rail line into a road corridor in order to ease movement of goods originating from and/or destined to Kampala/Kigali, since Uganda and Rwanda largely use the Port of Mombasa to get access to international markets. The standard gauge rail and road link will thus boost efficiency in delivering goods to Uganda and Rwanda through Kenya from international markets and vice versa for exports. South Sudan can also benefit from the railway/road project is a link was to be constructed from Kampala through the Elegu-Nimule border post (between Uganda and South Sudan) and onwards to Juba.

Kenya, Uganda, South Sudan, and Ethiopia Governments in March 2012 launched the LAPSSET[72] Corridor Project of Kenya, Ethiopia, with an intention of facilitating regional trade. The project is rated as the single largest, integrated, transformative, and game-changer infrastructure project in Africa, and incorporates: **(i)** A seaport at Manda Bay in Lamu; **(ii)** A standard gauge railway line to Juba in South Sudan and Addis Ababa in Ethiopia; **(iii)** Road networks between Kenya, Uganda, South Sudan and Ethiopia; **(iv)** an oil pipeline network from Uganda, Southern Sudan and Ethiopia to Lamu; **(v)** An oil refinery at Bargoni, Kenya; **(vi)** Three airports; and **(vii)** Three resort cities. The planned investment resources were equivalent to half of Kenya's GDP in 2013. LAPSSET is expected to make tremendous economic growth contributions to the four beneficiary countries, with projections ranging between 8% and 10% of GDP per country.

3. **Participation of private-sector players in implementation of the regional/bilateral trade agreements.**

    1. Participation of Uganda private sector in implementation of the regional/bilateral trade agreements. The Uganda private sector actively participates in trade negotiations related to the regional, African Continental and multilateral agreements (EAC, COMESA, Tripartite FTA, and AfCFTA, WTO), and also in bilateral negotiations relating to trade between Uganda and Kenya; based on the relevance of an issue under discussion to the businesses concerned.

    The business membership organisation/s (BMOs) in this regard are involved in lobbying and advocacy work for a business-friendly policy and regulatory environment on behalf of their member businesses. They also organize forums for deliberation of strategic issues that affect operations of their members. The known BMOs that exist in the country include:

    - Private Sector Foundation Uganda (PSFU): Founded in 1995, PSFU is the umbrella private sector business association which serves as Uganda's focal point for private sector advocacy, capacity building, and policy dialogue with the Government on behalf of the private sector; based on its core mandate of strengthening private sector capacity for effective policy advocacy and market competitiveness at the national, regional, and international level. Its membership comprises business associations, corporate bodies, and the major public sector agencies that support private sector growth. At the regional level, PSFU is the country's focal point for the East African Business Council (EABC) and the COMESA Business Council (CBC), both which facilitate business networking events, sector focused policy discussions, and other concerns affecting the EAC and COMESA private sector.

72. Lamu Port, South Sudan, Ethiopia Transport Corridor

- **Uganda Manufacturers Association (UMA):** This association aims to bring together Ugandan industrialists and manufacturers to guide the country towards sustainable global competitiveness. The association is also mandated to conduct effective lobbying and research-based policy advocacy with the Uganda Government. It additionally offers business networking opportunities to members through meetings, seminars, workshops, exhibitions, and trade fairs.
- **Uganda National Chamber of Commerce and Industry (UNCCI):** The Chamber is the oldest nationwide umbrella organization for the private sector in Uganda and has over 80 years' experience in advocating for a business enabling environment. Its core mandate is to promote and protect the interests of the business community in all sectors of the economy; including on issues related to internal and external trade, industry, tourism and transport services. UNCCI prioritises advocacy for appropriate economic policies and interventions that encourage a favourable business and investment climate, and enhancement of members' capacity for efficient operations. The Chamber works with key partners and players including Government Ministries, Departments and Agencies (MDAS) to ensure provision of an enabling environment for sustainable private sector-led growth.
- **Federation of Uganda Employers (FUE):** Registered in 1960, FUE is the representative body of employers in Uganda on social-economic issues. The core mandate of the organization is to enhance members' competitiveness through policy advocacy, fostering best human resource practices, and provision of business development services. The employers' organization represents its members on 15 boards and other major technical and regulatory bodies in the country. Through its business agenda, the FUE position is always shared with the Government and other stakeholders in the labour market. The organization also organizes events like the annual women's leadership conference, employers of the year award dinners, and CEO forums, which bring together different business executives for networking opportunities. The organization additionally publicizes opportunities for professional development which helps in professional development programming and educational seminars.
- **Uganda Insurers Association (UIA):** This association was founded in 1965 by insurance companies to promote the development and expansion of sound insurance and reinsurance activities in Uganda by embracing a common strategy that encourages close working relationships and exchange of best business practices. The association is also involved in policy advocacy aimed at influencing the enactment of favourable business legislation on behalf of its members.
- **Uganda Hotel Owners' Association (UHOA):** The association was registered in May 2000 as a trade and lobbying organization and the principal umbrella body of hotels, lodges, restaurants, membership clubs, motels, bed and breakfast inns, camps, and other establishments which render services in the hospitality industry. It represents such establishments on regulations, licensing, and policy matters through relevant forums organized by the government and other agencies.
- **Uganda National Association of Building and Civil Engineering Contractors (UNABCEC):** This association is the representative voice of contractors' opinions and concerns regarding issues that directly affect the building, civil engineering and construction industry. The association is responsible for lobbying and advocacy activities through which decision-makers get to know the industry's priorities necessary to improve the policy and regulatory environment of the construction industry. It also conducts capacity building activities for improved competitiveness of national construction industry, operators and stakeholders, and professional development of members. Additionally, it offers networking opportunities and partnership development initiatives which are intended to foster regional and international exposure and cooperation of stakeholders in the construction industry.
- **Uganda Small Scale Industries Association (USSIA):** This is the business association that represents the business interests of Micro, Small, and Medium Industries (MSMIs) in Uganda and has a strong membership base of about 5000 MSMIs. Its mandate is to support MSMIs to achieve success and economic growth. It was formed in 1979 to close the gap in representation and support for professional MSMIs that aspire to grow into large enterprises. Majority of Uganda's businesses fall in this category and thus USSIA is a good platform to learn, network, and expand business operations.
- **Association of Uganda Oil and Gas Service Providers (AUGOS):** This association was launched in 2012 with a founding membership of 8 (eight) private companies, which has grown to 103 members that include private companies and Government Agencies whose focus is to improve the capacity and standards of entities involved in the

oil and gas industry. AUGOS membership is projected to grow as more companies express interest to be included in the national supplier database for the oil and gas sector in Uganda through registration with the Petroleum Authority of Uganda (PAU). The association is also a platform for advocating the challenges facing Ugandan oil and gas suppliers and service providers to the Government.

- **Association of Uganda Tour Operators (AUTO):** This is a professional association which represents the tour operators industry, and its members are made up of companies which provide tour services in Uganda and abroad. The association was formed with the primary purpose of promoting the integrity and reputation of Uganda as a good tourist destination by ensuring that tour operators maintain the highest standards of service and value.
- **Uganda Bankers' Association (UBA):** This association was formed out of the need to develop, promote, protect and represent the professional interests of commercial banks in Uganda and to promote orderly conditions for banking transactions in Uganda. It is recognized in law by the Bank of Uganda Statute of 1993 as the body responsible for assessing and recommending licensed commercial banks to be admitted in the Clearing House. It therefore acts as a vessel through which government, regulators, and other stakeholders get feedback on the implementation of banking sector laws and policies.

2. **Participation of South Sudan private sector in regional/bilateral trade agreements.** The participation of South Sudan private sector in economic activities, including participation in EAC and AfCFTA Agreements is almost non-existent, mainly because the country is dependent on only one resource, oil, which translates to neglect in promotion of growth in non-oil sectors. Oil production in South Sudan is led by foreign operators and their supporting services, and does not readily lend itself to diversification and creation of additional products with potential to increase value at the national level. This dependency has adverse economic impacts in terms of macroeconomic deterioration through exchange rate vulnerability and fiscal volatility, often driven by deep seated political tensions and insecurity. For example, the banking sector faces serious challenges due to the strong currency depreciation that has led to high inflation, with the average inflation rate hitting a high of 71.2% per annum during the period 2009-2022 according to the World Bank. Overall, the price increase seriously affected consumer prices; with an item that cost 100 Sudanese pounds in 2009 costing 22,374.39 Sudanese pounds at the beginning of 2023. The parallel market for exchange of foreign currencies has been rising since the relapse into conflict in July 2016, leading to further macroeconomic instability and almost a complete loss of foreign exchange reserves in the country. These occurrences have led to major challenges in broadening private sector growth in the country which are beyond the control of the nascent private sector. Key challenges that greatly affect private sector operations include political instability, patronage, corruption, and economic uncertainty.
   Other constraints related to poor infrastructure (power, roads, telephone and IT coverage), access to finance and high transaction costs exacerbated by unclear or uncertain business regulations impact the competitiveness of the private sector. Further, inattention to the provision of public services, including health and education services, has translated to a growing population which is ill equipped to fill upcoming higher skilled labour opportunities, and a very weak private sector that can take advantage of the growing trade opportunities at EAC and AfCFTA levels.

4. Provision of Business Development Services (BDS)

The BDS offered to importers/traders/ businesses include advisory services in facilitating market access, pricing, inspection, clearing, and freight forwarding of fresh vegetables and fruits.

1. Provision of BDS in Uganda

Provision of BDS is an integral requirement for supporting business growth and development including in areas of trade development and competitiveness. The main BDS providers in Uganda include:

- Ministry of Trade and Cooperatives; which supports business development through its Trade Information Portal. The Portal specifically provides information to businesses on applicable import and export procedures and regulations in Uganda (including those applicable on imports of vegetables and fruits), clearance of transit goods under the EAC Single Customs Territory (SCT) Framework and at Malaba, Busia, Katuna, Mpondwe and Elegu border posts, and requirements for approvals of Certificates Of Origin (COO) applicable on Uganda imports originating from EAC and COMESA countries, China, India, GSP[73] giving countries such as EU and USA, Morocco, South Korea, and other non-preferential countries. In this regard, the COO is issued by Uganda Revenue Authority to proof that a good has been obtained, produced, manufactured or processed in Uganda and can therefore benefit from preferential market access provided in trade agreements to which Uganda is a signatory.
- The Microfinance Support Centre Ltd; which provides microcredit, grants and business development services in Uganda through its Business Development Services Unit. The organisation also supports MSMEs[74] to manage their businesses profitably and sustainably by providing technical support on practical approaches to gauge business performance and productivity. It additionally offers capacity building to MSMEs in business strategic planning, data management, reporting systems, monitoring and evaluation, target indicator development, auditing, and dissemination of best practices to improve efficiency and effectiveness.
- Mastercard Foundation; which from 2008 has partnered with Uganda Government in expanding access to finance, education, and skills training to smallholder farmers, teachers, and youth involved in agriculture across the country in line with the country's priorities on private sector-led economic development. The Foundation supports sectors that are prioritized by the government and are anticipated to create work opportunities for young women, men, and refugees through skills development. The initial commitment of USD 200 million focuses on: supporting agri-food systems and agribusiness through the commercialization of agriculture; strengthening Uganda's growing tourism and hospitality sector; and leveraging the significant public and private investment in the construction sector by improving vocational training and expanding access to financial services for micro-, small-, and medium-sized enterprises (MSMEs) working in construction.
- Enterprise Uganda: This is a mentoring program which matches young entrepreneurs between 18-35 years old with established, qualified, and experienced business mentors who provide non-financial support and guidance aimed to spur business growth.
- Uganda National Bureau of Standards; which supports businesses in standards development, improvement of the quality of products and services offered by industrialists/manufacturers, provision of information services on matters related to standards, quality assurance, metrology and testing; and provision of market surveillance to businesses based on need.
- Business Development Service Providers' Network (BDSPN); an accredited ILO[75] training provider that offers entrepreneurship skills for potential and existing entrepreneurs, on areas such as generation of business ideas, starting and improving a business, marketing, record keeping, costing, productivity analysis, stock control, financial planning, administration and operations, cost management; purchasing/buying of inputs, human resource management and administration, sales and marketing among others.
- Makerere University Business School (MUBS): The School was established in 1997 and provides business and management education with the aim of facilitating professional business development and promotion of entrepreneurship and business leadership in Uganda and the wider EAC region.

73. Generalised System of Preferences
74. Micro, Small and Medium Enterprises
75. International Labour Organisation

- **Institute of Corporate Governance Uganda (ICGU):** This is a membership organisation founded in 2000 to create, propagate, promote, deepen and entrench the corporate governance principles and practices of accountability, transparency, integrity, responsibility and excellence in both public and private organizations. It is a member of the African Corporate Governance Network with a local membership of over 130 Corporations and over 700 Individual members. Its specific objectives include:
  - Building national capacity in corporate governance;
  - Broad communication, visibility and awareness about corporate governance;
  - Advocacy on reforms of targeted laws and policies to enhance corporate governance; and
  - Membership development and engagement.

2. Provision of BDS in South Sudan.
Arising from the political conflicts in South Sudan since the country gained independence in 2011 and the fact that the county is still in its infant stages of economic development, provision of BDS is almost non-existent. The UNDP in 2016 initiated an "Entrepreneurship and Enterprise Support Programme for South Sudan", aimed to enhance rapid rural transformation to improve livelihoods and expand employment opportunities in the urban and rural settlements. The programme will specifically aim to improve productivity and efficiency through capacity enhancement, and to support the development of MSMEs among rural populations and the urban poor. Specific support targets sustainable livelihood generation and skills development through training of rural, urban and pastoral communities; in addition to supporting rural finance mechanisms, savings and credit schemes, private sector engagement in policy and regulatory reforms, and entrepreneurial development. The main beneficiaries are South Sudan farmers associations, dairy producers associations, poultry producers associations, and national private companies in the areas of supply, general trade, and construction. The programme overall goal is to enhance engagement of the unemployed youths, women and ex-combatants in gainful self-employment as part of the country's peace building efforts.

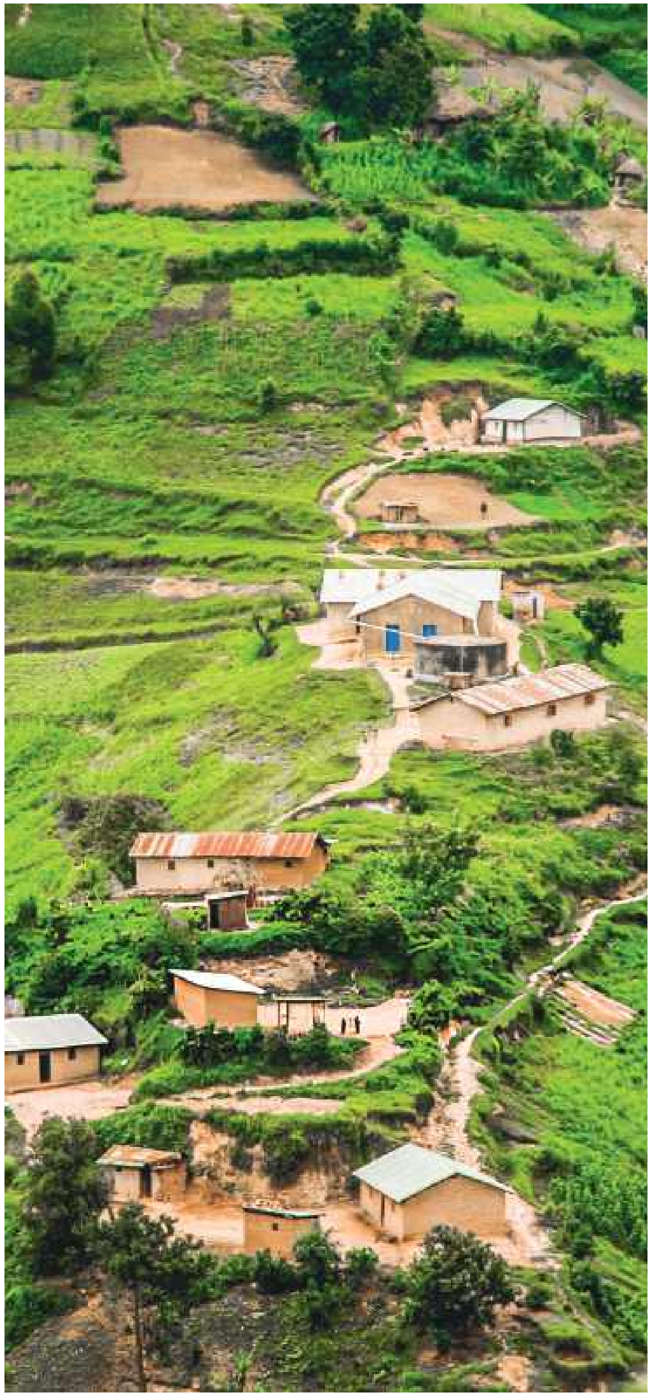
5. Efficiency and reliability of entry border clearance procedures by government agencies

1. The efficiency and reliability of entry port/border clearance procedures for Uganda and South Sudan.
As shown in Annex 17, the import entry conditions in both Uganda and South Sudan are poor compared to best performers, specifically on the cost and time taken to import. Although the data used dates to the period 2015-2019[76], the indication is that importation into Uganda and South Sudan is very uncompetitive as detailed in Annex 18, which shows that:

   - Uganda can be considered as an average export market as its average consumption expenditure per annum over the period 2018-2022 as a percentage of its GDP, compared with countries such as Somalia, West Bank and Gaza, Comoros, Haiti, Burundi, Marshall Islands, Central African Republic, El Salvador, and Moldova all which consume more than their level of GDP
   - The purchasing power for Uganda is poor; as Uganda has low annual GDP averaging US$ 38.4 million per annum over the period 2018-2022 compared to high income countries such as USA, China, Japan and Germany. In addition, Uganda's GDP per capita is very low at an average US$ 862 over the period 2018-2022, which translates to low purchasing power compared to best performers such as Monaco, Luxembourg, Bermuda, Switzerland, Ireland, and Norway. Uganda GDP per capita growth is also very low at an average 1% per annum over the period 2018-2022, which translates to poor growth of the country's purchasing power. Also, the country's population that resides in the largest city (Kampala) which is likely to consume imported fresh produce is low at an average 30% of total urban population, compared to countries such as Singapore, Hong Kong, Macao, Paraguay, and closer home Djibouti which have high populations that reside in their capital cities. However, the Uganda economy been growing at a reasonable level averaging 5% over the period 2018-2022, which indicates growing prospects as a good import market. Uganda's annual population growth rate at an average 3% per annum during the period 2018-2022 is encouraging, as this translates to growing purchasing power. Also, Uganda's annual population growth rate at an average 3% per annum during the period 2018-2022 is encouraging, which translates to growing purchasing power.

76. The World Bank no longer publishes data on doing business indicators since 2019

- For South Sudan, although the country's GDP figures are not provided, based on the high dependence of the country on oil as the main source of GDP, and the resultant macroeconomic instability, exchange rate vulnerability and fiscal volatility; indications are that the level of purchasing power can be rated as poor. This indication is supported by the small population residing in the largest city (Juba) at an average 0.4 million which does not seem to be growing over the period 2018-2022. In addition, the total population of South Sudan is small and seems concentrated in rural areas where imported goods are not consumed.
- The overall conclusion is that currently, both Uganda and South Sudan are rated poorly as markets for Kenyan originating goods including vegetables and fruits, as both countries' level of purchasing power is poor. The only positive trade enabling factors which have significantly supported Kenya's successful penetration of both countries' market of fresh vegetables and fruits as indicated in table 6 are therefore the proximity of the markets based on geographical sharing of borders, cultural relations, language, membership of both countries to the EAC, and historical relationships since Kenya has previously supported both countries to attain political peace.



2.4.4.4 Trade barriers facing Kenya vegetables and fruits exports to Uganda and South Sudan

No specific export trade barriers were identified on Kenya exports of vegetables and fruits to Uganda and South Sudan during consultations with stakeholders and through a review of NTBs reported through the Tripartite NTBs online reporting and resolution mechanism. However, exporters of vegetables and fruits to Uganda need to be sensitised of the following Non-Tariff Measures (NTMs) applied on imports into Uganda which are intended to protect human, animal and plant health and the environment. This would enable the exporters to comply with the measures, thus ensuring they don't risk their consignments being rejected at the ports of entry into Uganda. In turn, this would save on costs incurred by exporters due to rejected exports, while ensuring the measures are not wrongly reported as NTBs.

1. **Uganda NTMs applicable on fresh vegetables and fruits**
    1. In October 2013, Uganda introduced measures on Tolerance limits for residues of/or contamination by certain non-microbiological substances; Packaging requirements; Microbiological criteria; Hygienic practices, and SPS conditions; which apply during production of fresh chilli pepper and fresh onion varieties; and during post-production of these products (including storage, labelling and packaging requirements). The measures specify the Uganda standard quality requirements on contaminants, hygiene, packaging, labelling, and methods of sampling for fresh chili pepper and fresh onions varieties to be supplied

to consumers; whether domestically produced or imported; excluding varieties for industrial processing. Similar measures also apply on processed food and feed products intended for human and animal consumption.

2. In April 2015, Uganda introduced measures on inspection and clearance requirements for imported products including food and food products, aimed to protect human life and health. The measures require the Uganda National Bureau of Standards to carry out conformity assessment of all goods covered by compulsory standards destined for Uganda, and for the goods to be accompanied by a certificate of conformity or a certificate of road worthiness. Goods which arrive at a point of entry in Uganda without a certificate of conformity are subjected to a surcharge of 15% of CIF value, in addition to the payment of the prescribed inspection fees before a destination inspection is undertaken. The importer of goods is responsible for the costs of storage, laboratory analysis and any other incidental charges incurred during destination inspection which is based on a sampled laboratory analysis to determine conformity with relevant Uganda standards. It is only after completing this process that an import clearance certificate is issued. However, general goods whose FOB does not exceed US 2000 and certified goods from the EAC partner states are exempt from this regulation; with the latter required to provide proof of EAC origin through a certification mark issued by the exporting Partner State's competent authority. Also, any food can be inspected during the process of sale according to the Food and Drugs Act of 1959, and offenders will be prosecuted in a court of law.

3. In April 2013, January 2014, and April 2015, Uganda introduced product quality and testing requirements for various categories of vegetables and spices o be supplied fresh to the consumer after preparation and packaging (excluding mangoes for industrial processing). The products covered by these legislations include peas varieties, shelled lentils, dry whole soybeans, aba beans, okra, chillies and capsicums, white pepper, spinach, broccoli, cauliflower, brussels sprouts, cucumbers pickled vegetables, tomatoes fresh and canned mangoes, chayotes, ginger, asparagus. The measures specify requirements for methods of sampling and testing of such vegetables intended for human consumption and replace those published in 2011.

2. Obstacles while exporting to South Sudan

It is noted that South Sudan has not notified any import entry measures applicable on fresh vegetables and fruits through the Tripartite online NTBs reporting mechanism, which acts as a deterrent to exporting to the country by other trading partners.

In addition, there are serious transportation difficulties experienced while exporting goods from Kenya directly to South Sudan due to the dilapidated condition of some road sections of the Kitale-Lokichogio road which connects Kenya and South Sudan. The notable sections are the Lesseru[77]-Kitale (B14) (55km) and Morpus-Lokichar road (A1) (138km) sections. The Kitale-Lokichogio/Nadapal - Juba Road (945km) is the major strategic regional road corridor that would efficiently interconnect Kenya and South Sudan trade relations if it was upgraded to bitumen status and thereafter properly maintained. The road corridor buttresses the regional transport network by linking the Northern Corridor at Lesseru with the Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) corridor at Lokichar. Currently, due to the dilapidated condition of the said road sections, trade between Kenya and South Sudan and transit traffic to and from South Sudan is forced to reroute through the longer route via Uganda through Malaba OSBP-Elegu/ Nimule-Juba; which effectively translates to added transport time and costs. On a positive note, it is however noted that in June 2022, the Government of Kenya through the Kenya National Highways Authority (KeNHA) as the implementing agency, and with funding from the African Development Bank (AfDB), commissioned the design works for improvement of the road sections of concern; including the geometric[78] design of the road; design of road pavement layers, widening of carriageway and shoulders, and design of road over rail bridges near Lesseru, at Matunda and Moi's Bridge townships, and in Kitale Town; aimed to extend the economic life of the road corridor and to address highway safety concerns particularly on the Lesseru-Kitale and Morpus-Lokichar road sections.

77. Also locally known as Maili Tisa

78. Geometric design of roads include: Defining the purpose and scope of the road, route selection, design speed, lane widths, cross-section design, horizontal and vertical alignment design, intersections/junctions design, drainage design, and safety features: and design of clear zones aimed to reduce risks of accidents and to provide for recovery space for errant vehicles.

The design works will facilitate procurement of road improvement works , thus enabling the corridor to play its rightful role as a critical link between the busy Eldoret-Malaba highway and the Kenya-Sudan Road Link; both of which are critical to promoting and facilitating regional economic integration, particularly trade facilitation between Kenya and her neighbours Uganda and South Sudan. It is expected that when completed, the road upgrades will significantly enhance trade connectivity between Kenya and South Sudan through the Lokichogio border post instead of the longer Malaba-Elegu/Nimule-Juba transport route.

3. Challenges experienced on trade in fresh fruits and vegetables within EAC

Kenya fresh produce exporters sometimes experience delayed payments, destruction of product consignments, punitive regulatory measures, delayed cargo movements, and unfriendly tax regimes in target EAC markets. For example, while the EAC Customs Management Act (EACMA) allows for goods originating from any of the EAC countries to be charged either 0% or lower than the applicable CET rates which applied before 2017, Kenya cross-border traders are being charged higher duties in all EAC countries even after meeting the product-specific ROO. Additionally, trade constraints arise from application of national rather than regional SPS controls on food items traded within the EAC Partner States, including:

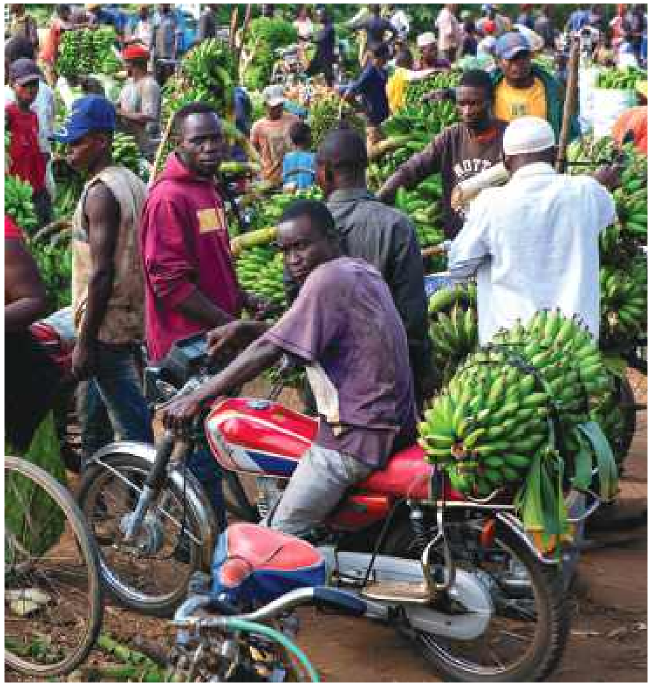
- Duplication and overlaps in regulatory functions, which increase the cost of trade.
- Poor notification by Partner States whenever they update their SPS laws or introduce new regulatory rules as is evidenced by low utilisation of the Tripartite web-based reporting mechanism in notifying such laws.
- Unclear procedural rules and timelines for administrative resolution of trade complaints.
- Poor adoption of EAC Standards in domestic SPS controls.
- Poor use of Equivalence and Mutual Recognition Agreements (MRAs) between EAC Partner States

It is noted that while the EAC Partner States signed the SPS Protocol in July 2013, the Protocol is yet to be enacted into a regional law which can be domesticated into national laws of EAC Partner States. The SPS Protocol aims to achieve the following objectives:

1. Promote trade in food and agricultural commodities within the Community and between the Community and other trading partners.
2. Strengthen cooperation and coordination of SPS measures and activities at national and regional level, based on common understanding and application within the Community.
3. Enhance SPS status through a science-based approach in the Community.

The key measures under the three objectives are:

1. Harmonisation of SPS measures on plant health, animal health and food safety;
2. Harmonisation of inspection and certification procedures for plant and plant products;
3. Harmonisation of a framework for management of pests;
4. Ensuring safe movement of plants and plant produce;
5. Building of systems for surveillance, pest listing, pest risk analysis, pest reporting, and designation of pest free areas and areas with low pest prevalence;
6. Provision of appropriate facilities and strengthening capacity for undertaking phytosanitary measures (such as inspection and quarantine activities);
7. Harmonisation of import and export documents and procedures;
8. Harmonisation and enforcement of plant quarantine measures; including a harmonised framework for design of management of plant quarantine facilities; and
9. Harmonisation of the registration, identification and traceability procedures for plant and plant products.



To facilitate implementation of the Protocol, the EAC has developed four volumes of SPS measures, namely: **(i)** Phytosanitary Measures (Volume I), **(ii)** Animal Health Measures for Mammals, Birds and Bees (Volume II), **(iii)** Animal Health Measures for Fish and Fishery Products (Volume III), and **(iv)** Food Safety Measures (Volume IV). However, the Protocol is yet to be enacted into an EAC Act of Law to enable implementation of the measures; in addition to enabling legal resolution of disputes on edible products (plants, food and animals) which are not resolved through bilateral and regional resolution approaches. Thus, trade in agricultural products within the region continues to be limited by application of differing national SPS legal and regulatory frameworks. The failure to conclude enactment of the SPS Protocol has led to:

- Duplication and overlaps in regulatory functions performed at the national level by EAC Partner States thus increasing the trade costs. In Kenya for example, several agencies are legally mandated to perform functions related to SPS matters, including KEPHIS[79], the AFA HCD[80], and PCPB[81].
- Poor notification by Partner States whenever they update national SPS related laws or introduce new SPS regulatory rules is evident by the low utilisation of the Tripartite online reporting mechanism in notifying such regulations to other Member States of EAC, COMESA and SADC RECs.
- Unclear procedural rules and timelines for administering resolution of trade complaints by businesses.
- Poor adoption of EAC SPS measures by Partner States.
- Poor use of Equivalence and Mutual Recognition Agreements (MRAs) between EAC Partner States as provided for in the SPS Protocol. In this respect, EAC States have agreed through the SPS Protocol to mutually recognise certification marks issued by Partner States' competent authorities, but such marks are often ignored as each state continues to pursue national instead of regional trade priorities, resulting to protection of national markets in edible produce.
- Continued reliance on under-capacitated national competent authorities that are expected to handle emergency responses to outbreaks of plant pests and diseases and unforeseen risks to food safety. The SPS institutions in this regard suffer from under-funding, under-capacity in technical personnel, and investment in testing, certification and quarantine infrastructure particularly at the exit/entry ports and border stations.

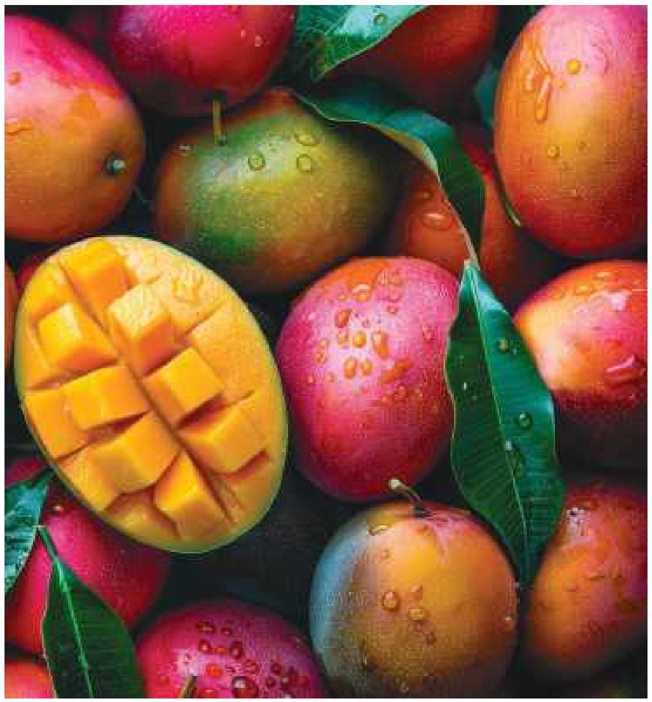
In some few instances Cross-Border Trade (CBT) transactions valued at below US$ 2,000 per consignment are supposed to benefit from import duty waiver if they are EAC originating and declared under the EAC Simplified Certificate of Origin (SCOO). However, some Uganda customs officials at the Malaba and Busia border stations often refuse to endorse such SCOO on grounds that goods being transacted are not EAC originating, even when the products in question appear in the EAC common list as proof that they meet the EAC Rules of Origin, and even when the SCOO have been endorsed by KRA[82] as proof that they originate from Kenya. The CBTs often do not report such obstacles into the Tripartite NTBs online reporting system as per requirement; either because some cases get resolved on the spot or through bilaterally consultations between Kenya and Uganda customs officials. However, some NTBs take a long period to get resolved after being reported; resulting to affected traders getting disillusioned with the Tripartite online reporting system as an avenue for facilitating speedy resolution of NTBs which affect perishable fresh produce. Additionally, some NTBs never get resolved as evidenced by some cases reported as early as 2009 when the Tripartite NTBs system was established, but which still remain unresolved as at December 2023 on reasons that they are not actionable (https://www.tradebarriers.org/active_complaints). Further, some food imports are refused entry by the importing country due to:
Kenya should sensitise the CBTs who export

1. The exporter exceeding specified MRLs on chemicals used to control pests and plant diseases;
2. Detection of aflatoxin on foods (e.g. maize, cereals, processed foods, fresh produce, etc.); and
3. Incomplete customs documentation to describe goods being exported as the basis of determining whether they benefit from duty waiver under the Simplified Trade Regime (STR) in order to apply the SCOO.

79. Kenya Plant Health Inspectorate Service
80. Agriculture and Food Authority; Directorate of Horticultural Crops Development Authority (HCD)
81. Pest Produce Control Board
82. Kenya Revenue Authority

to the EAC countries on the STR and how to use the SCOO, and also how to report NTBs encountered into the Tripartite NTBs system, and how to ensure fresh produce meet the specified MRLs on use of pesticides applied in each EAC country.

Kenya needs to prioritise discussions at EAC regional forums to ensure the EAC Council directive regarding levying customs duties on EAC originating goods is implemented without delay as per the EAC Customs Management Act (EACMA). The Council Directive specifically provides that goods originating from any of the EAC countries and traded within the Community should be charged either 0% or lower than the applicable CET rates which applied before 2017; if such goods conform to the product-specific ROO.



2.4.4.5 Priority measures that should be addressed to facilitate increased Kenya exports of vegetables and fruits to Uganda and South Sudan

1. **Broad measures for fresh vegetables and fruits**

   Previous studies (such as the NTBs study which informed the design of the EAC NTBs elimination mechanism in 2005/2006) have noted that some NTBs facing intra-EAC trade in food items are politically and private sector driven; aimed to protect domestic market shares of farmers and traders. The influencers are able to convince their governments that a given imported product does not meet national SPS measures and therefore import entry blockages should be applied. The politicians involved are quick to support the suggested short-term measures by influencing enactment of legislative actions through national parliaments as a guarantee for continued political support by their constituents (such as farmers, traders, distributors and manufacturers) whose primary goal is to protect their national markets. The solution to resolving such politically/business driven NTBs however lies in harmonisation of national into regional standards and regulations as long-term measures, and in publicizing regional standards/regulations amongst border entry/exit stations and the business community to ensure increased uptake and application. This approach is already being pursued.

   It is noted that broadly, the production of fresh produce in Kenya is growing even for the EAC markets. Thus in addition to harmonisation of national into regional standards and regulations, it is necessary to address some key challenges facing production and trade in fresh vegetables and fruits; including packaging and labelling, adherence with weight specifications, diversification of export markets, establishment of market-specific promotion measures; and the need to inculcate a culture of production which is free from use of child labour, human rights violations, and environmental damages. Kenya must also invest in cold chain facilities to reduce post-harvest losses, in addition to providing extension services to fresh producers. Regarding product-specific measures, the following bottlenecks need to be addressed:

   1. Mangoes: The varieties of mangoes grown in Kenya are unpopular when presented to the export markets (such as apple mango). In this case, the most popular mango variety in major world markets and particularly in European markets is Alfonzo. Kenya should consider promoting this variety for better future market entry.
   2. Avocadoes: There is evidence that the Kenya avocado export market is growing in international as well as the regional markets. The main export obstacles that need to be addressed to enable increased exports of this fruit relate to certification of producers and exporters, aimed to enhance Kenya's image as a reliable source country that respects safety and health of consumers, also marketing and export promotion measures applied to access export markets. Producers should therefore be effectively sensitised on the need to harvest only mature fruits, measures to ensure appropriate cooling and storage and other post-harvest

requirements, and measures to control the spread of pests and diseases. The exporters should be sensitised on measures for complying with food safety, traceability, SPS regulations, and technical standards (including the International Avocado Standard and the Kenya Avocado standards KS 1758, the EAS Fresh Avocado Specification of 2017, and the KISO 2295: 1974 Avocado Guide for Storage and Transport). In addition, producers and exporters should be sensitised on the preferred avocado size and product quality, packaging and labelling regulations, as well as avocado global market preferences and trends; including the global use of private standards such as: (i) Global gap, (ii) Sedex Members Ethical Trade Audit (SMETA), British Retail Consortium Global Standards (BRCGS) and Organic certification.

2. Measures to address SPS related trade obstacles experienced on EAC cross-border trade.

To address the problems associated with application of national rather than regional SPS laws, regulations and measures, Kenya should prioritise the enactment of the SPS Protocol into an EAC Act of Law to facilitate the resolution of SPS-related trade obstacles, including:

- Updating of food safety regulations, and improved dissemination of information on national SPS legislation and regulations, processes, and procedures by each State, aimed to capacitate particularly small-scale traders and producers of edible plant and plant materials (vegetables and fruits) on requisite measures to comply with when trading within the region.
- Harmonisation of national into regional SPS measures and regulations.
- Vesting of all SPS laws and regulations under one defined national competent authority.
- Harmonisation of national into regional frameworks for SPS related controls and enforcement; including conformity assessments, inspections, testing, quarantine measures on plants and animals, and management of food safety risks.
- Development of a harmonised framework for coordinated design and management of plant quarantine measures

3. Measures to address trade obstacles facing cross border traders within EAC.

The Kenya Government should sensitise the CBTs who export to the EAC countries on how the STR works in order to facilitate increased use of the SCOO. The Government should also sensitise CBTS on how to report NTBs encountered in the course of exporting to EAC and Tripartite FTA countries into the Tripartite NTBs system, and on measures to ensure fresh produce farmers comply with the specified MRLs on use of pesticides applied in each EAC country.

Kenya should also prioritise discussions at EAC regional forums aimed to ensure the EAC Council directive regarding levying customs duties on EAC originating goods is implemented without delay as per the EAC Customs Management Act (EACMA). The Council Directive specifically provides that goods originating from any of the EAC countries and traded within the Community should be charged either 0% or lower than the applicable CET rates which applied before 2017; if such goods conform to the product-specific ROO.

4. Improvement of the Kitale-Lokichogio/ Nadapal Road.

It is critical to complete the Kitale-Lokichogio road improvement initiative started in June 2022 by GOK under coordination by KeNHA with funding from the African Development Bank (AfDB). The main road sections of concern which need to be completed with urgency are the Lesseru-Kitale and Morpus-Lokichar road sections. The project completion will contribute substantially in extending the economic life of the road corridor and address highway safety concerns; thus enabling the corridor to play its rightful role as a critical link between the busy Eldoret-Malaba highway and the Kenya-Sudan Road Link; both of which are critical to promoting and facilitating regional economic integration, particularly trade facilitation between Kenya and South Sudan and also with Uganda.

5. **Investment in physical SPS infrastructure at Lokichogio/Nadapal border post.**

   There is need to improve physical infrastructure at the Lokichogio/Nadapal border post in anticipation of completion of the ongoing Kitale-Lokichogio road improvements. The priority measures for the border post improvements include the need for KEPHIS to invest in suitable modern facilities for efficient inspections, laboratory analysis, rapid diagnostics of plant pests and diseases, and quarantine of fresh produce in order to eliminate detected pests. Investment in modern infrastructure is necessary to ensure certified vegetables and fruits exported to South Sudan do not get subjected to rejections on the South Sudan side of the border post and/or unnecessary retesting and inspections. In addition, the infrastructure works should consider creating a green channel for clearance of fresh produce, which normally go to waste during the inspection and laboratory testing processes. Additionally, GOK will need to facilitate investment in cold storage facilities to enable efficient preservation of fresh produce during the inspection process, aimed and to prevent goods from going to waste, which results to subsequent losses for exporters (particularly small-scale exporters). In addition, the Lokichogio/Nadapal border post should be upgraded to a One-Stop Border Post (OSBP) to enable efficient export/import clearance by border agencies under the Integrated Border Management (IBM) processes, based on lessons learned from similar initiatives at Malaba and Busia OSBPs.

2.4.4.6 The EAC Mechanism Reporting, Monitoring and Elimination of NTBS

The elimination of NTBs in the EAC is provided for in the NTBs ACT of 2017 came into force on 27th October 2017. The objective of the Act is to enhance and facilitate trade by:

1. **Providing a legal framework for the removal of NTBs in the Community;**

2. **Providing for a mechanism to identify and monitor the removal of NTBs within the Community; and**

3. **Removing restrictions on importation and exportation within and outside the Community.**

The Act uses the WTO NTBs Categorisation guide to specify NTBs which should be eliminated. It also specifies that any activities which are not authorized in the trade-related laws of the Community or in Partner States' laws are disallowed as elaborated below.

1. **The WTO NTB categories:**

   1. Export subsidies, government monopoly in export and import, state trading and preference given to domestic bidders or suppliers, requirement for counter trade, domestic assistance programmes for companies, discriminatory or flawed Government procurement policies.
   2. Governments imposing anti-dumping duties, arbitrary customs classification, misinterpretation of Rules of Origin, import licensing, decreed customs surcharges, additional customs and other charges, international taxes and charges levied on

imports and other tariff measures.

3. Restrictive technical regulations and standards not based on international standards, inadequate or unreasonable testing and certification arrangements, disparities in standards, inter-governmental acceptance of testing methods and standards, packaging, labelling and marking.
4. Sanitary and Phyto Sanitary (SPS) Measures, conformity assessment related to SPS/TBT, special customs formalities not related to SPS/TBT, other technical measures.
5. Quantitative restrictions, exchange control, export taxes, quotas, import licensing requirements, proportion restrictions of foreign to domestic goods (local content requirement), minimum import price limits, embargoes, -non automatic licensing, quotas, prohibitions, quantitative safeguard measures, export restraint arrangements, other quantity control measures.
6. Prior import deposits and subsidies, administrative fees, special supplementary duties, import credit discriminations, variable levies, and border taxes.
7. Arbitrariness, discrimination, costly procedures, lack of information on procedures or on charges, requirement for complex or a wide variety of charges and documentation.

2. Any activities which are not authorized by the laws of the Community or in laws of the Partner State are disallowed if they have the following effects:

1. Cause an additional cost to the business of an affected Partner State, including surcharges and customs bonds;
2. Result in wastage of time or loss of business or market including, delays in clearing imports and lengthy testing and certification procedures;
3. Lead to an import ban on market entry and loss of potential markets;
4. Amount to a corrupt practice;
5. Restrict business transactions in the Partner State;
6. Not recognize the East African Rules of Origin, leading to additional cost for verification of imported goods and loss of business;
7. Cause any other impediment to trade within the Community, as may be determined by the Council; and/or any other adverse activities as may be determined by the Council.

The Act specifies that a Partner State whose public institution engages in any activities that lead to an NTB shall compensate the affected party for the business entity for the loss caused as may be determined by the EAC Committee on Trade Remedies within thirty days. Upon failure to resolve the dispute within 30 days, the aggrieved business entity may petition the East African Court of Justice. Further, the Act additionally provides that:

1. Each Partner State should establish a National Monitoring Committee (NMC), comprising of representatives of relevant Government institutions and private sector, whose responsibilities are to:

1. Outline the process of elimination of NTBs at the national level;
2. Monitor the process of elimination of reported NTBs at national level;
3. Receive reports and complaints from affected businesses on the existence of NTBs in EAC;
4. Identify on its own initiative, any NTBs that exists in the EAC region and notifying the relevant public authority of the Partner State of existence of a reported NTB;
5. Make recommendations on the removal of an encountered NTB to the relevant institutions and public authorities of the Partner State affected by an NTB;
6. Advise the Partner State whose business is affected by an NTB on the policies and laws that contain or lead to the encountered NTB;
7. Investigate the report or complaint made by businesses and prepare a plan for the elimination of the NTB, in accordance with the EAC Time Bound Programme (TBP) for elimination of identified Non-Tariff Barriers. The elimination plan should include:
   - The impact of the NTB on the affected business,
   - The institution/s in the Partner State responsible for the NTB,
   - The timeframe required for the elimination of the NTB,
   - The performance benchmarks and means to be used to verify the elimination of the NTB,
   - The challenges that may be encountered in the process of eliminating the NTB and the recommended solution to the challenge;
8. Prepare periodic reports on the elimination of NTBs for the Council, indicating the proposed action to eliminate the reported NTBs in each Partner State.

2. **The Ministry responsible for EAC Affairs in each Partner State is designated as the National Focal Point (NFP) and Secretariat of the NMC to conduct the following functions:**
    1. Initiate policies and strategies on the elimination of NTBs for approval by the NMC, in accordance with Community laws and laws of each Partner State;
    2. Coordinate the activities of the NMC;
    3. Facilitate the implementation of the EAC Time Bound Programme (TBP) for elimination of identified NTBs and monitoring its implementation;
    4. Disseminate information to the business community on NTBs identified in the Partner State and the steps to be taken to eliminate them;
    5. Refer reports or complaints made by affected businesses to the NFP of the Partner State in which an NTBs are encountered for necessary action;
    6. Collaborate with the NMCs and the NFPs of the other Partner States to facilitate the implementation of the EAC TBP for elimination of NTBs;
    7. Track and monitor any new NTBs in the Community and notify the NMC accordingly; and
    8. Submit periodic reports of the NMC to the Council.
3. **The elimination of identified NTBs encountered within the Partner States can be based on:** (i) mutual agreement between the concerned Partner States, (ii) implementation of the EAC TBP; and (iii) laws, regulations, directives, decisions or recommendations made by the Council.
4. **A Partner State whose businesses are affected by an NTB in another Partner State may initiate the process of elimination** in accordance with the TBP by submitting to the Partner State where the NTB is encountered a written notification with a description of the NTB, and request for information regarding the NTB. The Partner State issuing the notification should also submit a copy to the EAC Secretary General.
5. **The recipient Partner State which receives the notification should within ten days provide a written response to the requesting Partner State on the issues specified in the notification.** Where the responding Partner State is not able to respond to a notification within ten days, it shall inform the requesting Partner State of the reasons for the delay and shall submit its response within twenty-five days of receipt of the notification, and a copy the same to the Secretary General. Where the recipient Partner State fails to resolve the NTB, the Secretary General shall within fifteen days convene a meeting of the concerned Partner States, aimed to resolve the NTB. If the NTB is not eliminated, the Secretary General shall refer the matter to the Council, which shall either make a directive, decision or recommendation, or refers the matter to the EAC Committee on Trade Remedies for further investigation and feedback. Any person aggrieved by the Council directive, decision or recommendation, or by the decision of the Committee on Trade Remedies has the right to refer the matter to the East African Court of Justice for final legal determination.
6. **When an NTB is reported to a Partner State's NMC or NFP by an affected business, the concerned Partner State or States shall as a priority hold discussions for the elimination of the NTB.** Where the Partner State or States do not agree on the elimination of the reported NTB, the aggrieved Partner State shall notify the Secretary General and request the matter be referred to the Council. If the aggrieved Partner State does not notify the Secretary General within 30 days, the affected business has the right to notify the Secretary General directly without having to report an NTB to the NFP or NMC. The notification to the Secretary General shall have the same effect as the notification which should have been provided by the aggrieved Partner State.
7. **The Act does not affect the rights of a Partner State to take temporary measures which may amount to an NTB, if such temporary measures are in the interest of defence and security, public safety or public health.** Prior to the introduction of a temporary measure, the Partner State shall inform all other Partner States of the intended temporary measure; but if notification is not possible prior to introduction of the measure, the introduction and notification may be done simultaneously. The Partner State shall inform the other Partner States of the description of the temporary measure, the date of imposition, and the period of existence; which shall not exceed 12 months. The temporary measures shall be reviewed as provided for under regulations made under the Act.

8. **All Partner States shall take necessary steps to protect, preserve and promote the rights of persons with disabilities engaged in cross-border trade or any other commercial activity.** Partner States shall also ensure that the identification and elimination of NTBs are gender sensitive. In addition, affirmative action and other measures undertaken to address issues of equality and equity in the Community shall not be construed to constitute NTBs.

9. **The NFPs shall furnish each other with information, official reports and documents on matters relating to NTBs in their respective Partner States.**

10. **The Council shall coordinate and monitor the elimination of NTBs in all Partner States.** It shall meet at least annually: **(i)** receive reports of existing NTBs in the Partner States for consideration; **(ii)** require the Secretariat to compile and disseminate information on NTBs existing in the Partner States; **(iii)** advise the Partner States on the elimination of NTBs; and **(iv)** approve updates to the EAC TBP.

11. **The Council may recommend to the Summit to impose, as may be appropriate, any sanction against a Partner State that fails to comply with any of its directive, decision or recommendation;** and may make regulations for giving effect to the provisions governing NTBs elimination.

12. **The NTBs Act shall take precedence over the laws of Partner States with respect to NTBs elimination.**

In addition to the EAC NTBs mechanism, the three Tripartite Free Trade Area (FTA) RECs (COMESA, EAC and SADC) have jointly developed a common NTBs web–based system for reporting, monitoring and eliminating NTBs by Member States (https://www.tradebarriers.org), which aims to assist the region to address NTBs encountered in the course of trading across the FTA bloc of 29 Member States[83]. The system has the same objective of facilitating trade as the EAC NTBS Act 2017; and the added advantage of enabling reporting, monitoring and elimination of NTBs through the online based system. The system also publicizes all NTMs applied by each of the 29 Tripartite Member States, which is more than half of the African Union (AU) Member States. The AU has developed a similar system through the AfCFTA framework, which is not yet implemented pending the full ratification of the AfCFTA by the required 14 countries. Thus, Kenya can report any NTBs encountered by its national businesses while trading in the 29 Tripartite Member States without having to rely on the manual processes provided in the EAC NTBs Act 2017. Identification, monitoring and elimination of NTBs to trade is one of the priority areas for policy harmonisation and coordination under the Tripartite FTA; since with tariff liberalisation having been largely achieved, the elimination of NTBs and other barriers to trade remain the main challenges to reducing the high cost of doing business across the region. The web-based NTBs mechanism will thus enhance transparency and easy follow-up of reported and identified NTBs and NTMs. The NTBs resolution process is based on reports submitted either by the affected Member States or by business operators. Reporting can be done through: (1) the web-based reporting tool, (2) the SMS-to-email tool, and (3) other forms of offline reporting (i.e. manual reports). These reporting channels offer an easy and transparent process of reporting NTBs as they are accessible to economic operators, government institutions, academic researchers and other interested parties.

In addition to applying the EAC and Tripartite NTBs reporting and elimination mechanisms, Cross Border Joint Committees have been established to deal with trade obstacles encountered by small cross border traders (CBTs) whose transaction values are below US$ 2,000 per transaction. The CBTs report such obstacles through the complaints desk which is manned by Trade Information Desk Officers (TIDOs) and housed by Customs Authorities at most of the border stations (such as at Malaba and Busia for Kenya/Uganda cross border trade. The complaints are thereafter forwarded to the Joint Border Committees for resolution.

83. The 29 Tripartite member states are Angola, Botswana, Burundi, Comoros, DR Congo, Djibouti, Egypt, Eritrea, Eswatini, Ethiopia, Kenya, Lesotho, Libya, Madagascar, Malawi, Mauritius, Mozambique, Namibia, Rwanda, Seychelles, Somalia, South Africa, South Sudan, Sudan, Tanzania, Tunisia, Uganda, Zambia, and Zimbabwe.

2.4.4.7 The recommended framework for addressing trade obstacles facing Kenya exports to EAC and the Tripartite FTA countries

The EAC NTBs Act 2017, coupled with the Tripartite NTBs online mechanism for reporting, monitoring and eliminating NTBs are suitable frameworks for use by Kenya to report NTBs encountered during trade within the Tripartite FTA countries. Kenya should prioritise the usage of both systems, in addition to being more active in reporting NTBs encountered through the Tripartite system. A review of NTBs reported since 2009 shows that Kenya has never reported NTBs on cross-border trade in vegetables and fruits into the system. Additionally, review of the Tripartite system and consultations with stakeholders[84] indicates that:

1. **The Tripartite system appropriately captures information on reported NTBs, the WTO NTBs classification codes under which they are categorised, and the progress achieved in resolving them.** However, the responsibilities for acting on reported NTBs are not indicated in the system, and so it is not clear how the resolution process was pursued, particularly on the yet unresolved cases which are indicated as "non-actionable". This is an issue of concern, as some of the unresolved cases were reported way back in 2009 when the system was introduced; yet the reporting businesses have not been given reasons as to why the cases cannot be addressed. Further, the Tripartite NTBs matrix does not indicate the impacts of reported NTBs (time loss, business costs, value/volume of rejected and wasted products, and lost business opportunities). For the system to be useful in facilitating resolution of reported NTBs, these gaps need to be sufficiently addressed. Kenya should prioritise the resolution of these gaps during Tripartite discussions.

2. **Stakeholders' particularly exporters of vegetables and fruits are not sufficiently sensitised on the institutional structure for NTBs reporting, validation, verification, impact analysis, and resolution.** These gaps limit ability of businesses to get feedback on actions taken and/or planned to resolve reported NTBs. In addition, Tripartite Member States haven't allocated budgets to enable engagement of dedicated NFPs that would facilitate a comprehensive approach to NTBs resolution at national and regional levels. Further, although EAC has established a legal framework (NTBs Act 2017), the other two RECs (COMESA and SADC) have not established similar frameworks, which is a major weakness in the NTBs resolution process. These gaps need to be closed by agreeing on Tripartite FTA legal framework which can thereafter be domesticated into the national trade-related laws of Member States to enable binding commitments on NTBs resolution. The legal framework should be backed with final resolution provisions to discourage wayward MDAs[85] which may introduce new trade laws, regulations and requirements that end up as NTBs without prior regional consultations and agreement. It is also to be noted that even EAC countries have not yet domesticated the EAC NTBs Act 2017 into their national trade-related laws as envisaged. Kenya should prioritise domestication of the EAC NTBs Act, the development of a Tripartite FTA legal framework, and domestication of the Tripartite NTBs law into national laws of the 29 Tripartite Member States.

84. Stakeholders' consultations on the Tripartite web-based system include consultations during the current assignment and also during a similar assignment for SADC region in October 2023, titled "Assessment of the Impact of Recurring NTBs in SADC region and how to Resolve them Effectively"
85. Government Ministries, Departments and Agencies

3. **The NFPs have not been very effective in coordinating the NTBs reporting, validation, and resolution, and in facilitating NMC consultative meetings because none of the EAC as well as the Tripartite countries allocate budgets for NFP work activities as envisaged,** while none of the mandated Government Ministries have established appropriate offices to deal exclusively with NTBs work *(including collecting NTBs reports, validating existence of NTBs, conducting NTBs impact analysis, preparing periodic reports of findings, and presenting such reports to NMCs for discussions and decision making).* The NMCs have also not been very effective in facilitating the NTBs resolution process at national and regional levels, since the membership keeps changing without giving notification to the Tripartite system manager as required. However, the RECs Secretariats have been reporting on unresolved NTB cases to the respective Council of Ministers on schedule as evidenced by the quarterly Time-Bound Framework which is used by the EAC Secretariat; a process that has enabled the Council to give policy guidance on such cases. The national-level gaps related to allocation of national budgets for NTBs work, and the institutional set up of NFPs and NMCs need to be addressed at the Tripartite and REC levels. Kenya should prioritise relevant discussions at EAC and COMESA forums regarding resolution of these gaps as she is an active member of both RECs.

4. **While the Simplified Trade Regime (STR) and its related simplified certificate of origin (SCCO) has enabled a reduction in the number of NTBs encountered by small cross border traders (CBTs), there is need for:**
    1. Increased sensitisation of the STR and SCOO to enable CBTs to understand how the SCOO works, measures to ensure compliance, and benefits of using the SCOO in their cross-border activities.
    2. There is need for EAC to publish a common list of products that can potentially benefit from STR/SCOO.
    3. There is need to capacitate CBT trade by ensuring the Trade Information Desks are assigned dedicated Trade Information Desks Officers (TIDOs), and that they have an annual budget and working offices which are funded directly by EAC governments.
    4. There is need for increased CBT training on customs administrative documentation, SPS measures, quality standards, and how to report NTBs into the Tripartite system using the personalised phone-based software.

5. **The EAC Non-Tariff Barriers Act (2017) needs to be finalised as part of measures to fast track implementation of the CMP provisions on free flow of goods across EAC. The specific areas of concern to the business community include:**
    1. Domesticating the NTBs Act 2017 into Partner States' laws
    2. Harmonisation of Partner States' tax regimes (particularly on domestic taxes such as VAT and excise duties)
    3. Harmonisation and mutual recognition of national SPS measures by competent authorities as provided for in the EAC SPS Protocol of 2013 and the SPS Bill of September 2016, both of which provide the EAC SPS legal framework and the measures. Both documents seek to enhance food safety, animal health and plant health in the region by establishing common EAC procedures and certification schemes in the regulation of imports and exports of food and food products; plants and plant protection agents; and animals and animal protection products.
    4. iv)Harmonisation and mutual recognition of national quality standards and certification marks issued by national competent authorities as provided for in the EAC SQMT Act (2006); which provides the principles for cooperation in the application of a common policy for the standardisation, quality assurance, metrology and testing of goods and services produced and traded within the region. The harmonisation process would increase the EAC harmonised standards already in place, thus facilitating smooth cross border trade without the need for retesting goods at border stations, such as packaged horticultural goods particularly fruits which target supermarkets outlets.
    5. The need to finalise the SPS Bill into an Act of law is that SPS measures are cited as serious obstacles to efficient cross border movement of food items and horticultural goods. Varying Phytosanitary Standards applied by EAC Partner States end up restricting movement of plant materials (horticultural products including vegetables and fruits). The finalisation of the Act would facilitate effective application of SPS measures and certification of products exported to regional (EAC and Tripartite), African continental, and international markets (EU and UK). Kenya thus should lead the finalisation drive as she has an interest in expanding her horticultural exports into the regional, continental and

international markets beyond the current levels. Conclusion of the Act would also contribute to resolution of SPS related NTBs which adversely affect intra-EAC trade, based on mutual recognition of SPS certification marks and certification of EAC agricultural producers by competent SPS institutions. This would facilitate increased access to the regional markets for horticultural produce (including fresh vegetables and fruits).

6. The application of the SQMT Act is not efficient. This is expected to include harmonisation and mutual recognition of national quality standards and certification marks issued by national competent authorities, in addition to increasing the number of harmonised standards. If these measures were implemented, they would greatly facilitate efficient cross border trade in packaged horticultural goods (including fruits targeting supermarket outlets). Nevertheless, the SQMT Act has been strengthened through development of harmonised EAC standards, and through development of regulations to facilitate application and enforcement of such standards, including:

   - The EAC SQMT (Product Certification) Regulations, 2013;
   - The EAC SQMT (Designation of Testing Laboratories) Regulations, 2013; and
   - The EAC SQMT (Enforcement of Technical Regulations in Partner States) Regulations, 2013.

   In addition, Partner States have established the East African Standards Committee (EASC) as a Sectoral Committee with the mandate to conceptualise and monitor the implementation of harmonized standardization activities in the Community; develop and establish frameworks and programmes for advancing compliance by the Partner States; establish procedures for the development, approval, gazetting and adoption of harmonised standards at the national levels; establish liaison mechanisms with regional and international organizations; review the effectiveness of the national WTO TBT Agreement enquiry points; and resolve disputes related to product standards and applied administrative measures.

   However, businesses/traders continue to experience cross border trade obstacles such as refusal to recognise standard marks issued by competent standard bodies, and poor awareness by producers and exporters about specified product standards and applicable procedures for inspection, testing, and certification of products traded across EAC borders. Addressing these bottlenecks would facilitate increased compliance by producers/exporters with the quality standards set at regional, African continental and international levels.

7. The regional business associations are weak and thus unable to document NTBs impacts. In this regard, there is need to support bodies such as the EABC to conduct and document NTBs impacts (mainly time loss and monetary costs) associated with NTBs. EABC has prioritised the need to conduct NTBs impact analysis in this regard but faces budgetary constraints, although a template for capturing such obstacles exists. A case study is planned for 2024 but funding has not yet been secured.

8. The Tripartite FTA is unable to organise regional consultative meetings on NTBs resolution due to lack of coordination procedures. It is therefore necessary to support conclusion of the framework for TFTA NTBs coordination using the experiences so far gathered at EAC level, including the institutional structure, working modalities and coordination between NMCs, the RMC and policy making organs. This would speed up the resolution of NTBs which are reported through the Tripartite NTBs online reporting mechanism, including regional NTBs that cut across EAC, COMESA and SADC region. This implies EAC would have to incorporate organs of COMESA and SADC to facilitate resolution of NTBs that go beyond the mandated roles of EAC organs.

The main recurring NTBs relate to inability of producers/exporters to comply with the specified ROO, SPS measures and quality standards; variances in customs valuation methods applied by Partner States, and application of discriminatory domestic taxes and charges on imports by Partner States (such as excise duty, import declaration fees, border charges, etc.).

2.4.5 Assessment of The Asian Lead Markets

2.4.5.1 Trade agreements between Kenya and Asian lead export markets for vegetables and fruits

As summarized in Part 2.2 and detailed in Annex 8, analysis of Kenya's 2018-2022 export trade data at the HS 6-digit level shows that five Asian countries emerge as Kenya's lead export markets, namely India, Pakistan, United Arab Emirates (UAE), Viet Nam, and Saudi Arabia, Oman, China, Hong Kong, Qatar, and Iran are also cited by exporters as emerging markets The study did not assess these latter two counties as they did not merge as lead export markets. Currently, Kenya does not have bilateral trade agreements with any of the five countries. However during Kenya's Presidential visit to India in December 2023, Kenyan and India signed an MOU[86], to be supported with detailed provisions on trade relationships. In addition, Kenya and UAE are currently negotiating a comprehensive Economic Partnership Agreement (CEPA). The absence of clearly defined trade relations between Kenya and these countries will continue to be governed by provisions of WTO Agreements. One of the clear provisions is that Kenya vegetable and fruits exports to Asian countries are subjected to third country MFN tariffs (refer to Annex 20), most of which are high at 30% in the case of India, although some few vegetables tariff lines attract lower MFN tariffs of 0% and 10%, namely: HS071331; HS 071333; HS 071390; and HS 071310. In the case of most Middle East countries, the MFN tariffs on vegetables and fruits are quite low with most at 0%. This means import duties are not the main problem in accessing the Asian markets; but other factors restrict market entry, including SPS and TBT measures, customs formalities and ROO among others; which are elaborated in the WTO Agreements. The most relevant WTO Agreements for fresh produce exports in this regard are: (1) The Agreement on Agriculture; (2) The Agreement on Rules of Origin, (3) The Agreement on SPS, (4) The Agreement on TBT, (5) The Agreement on Anti-Dumping Measures, (6) The Agreement on Customs Valuation, (7) The Agreement on Import Licensing, (8) The Agreement on Subsidies and Countervailing Measures, (9) The Agreement on Safeguards, and (10) The Agreement on Trade Facilitation. The provisions contained in these Agreements are elaborated below.

1. **The Agreement on Agriculture**
   Agreement covers all basic agricultural products categorised under the HS Chapters 1 to 24 (excluding fish and fish products). The value added products derived from these basic products include bread, butter and meat, chocolate and sausages, The agreement provides that all measures which affect trade in agricultural products should be eliminated, including domestic agricultural policies which may discourage imports, and subsidization of agricultural exports which may end up outcompeting similar products in a given market. The Agreement provides that such measures should not be used to introduce stricter rules on imports than those applied on equivalent products in a given domestic market, such as SPS measures which may appear in the form of unjustified and protectionist requirements aimed to safeguard food safety, animal and plant health. It also requires WTO members to commit to reduce domestic agricultural support, export subsidies and/or market access support; and prevents countries from introducing non-trade concern measures on reasons of food security, and protection of the environment. It however allows developing countries to apply special and differential treatment measures, aimed to improve opportunities and terms of access to agricultural products of particular export interest.

   The Agreement in principle incorporates all commitments made by WTO members through other Agreements on trade in goods, including customs valuation, import licensing procedures, pre-shipment inspection, emergency safeguard measures, subsidies and technical barriers to trade. However, where there is conflict with provisions of other WTO Agreements, the provisions contained in the Agreement on Agriculture prevail.

86. Memorandum of Understanding

2. The Agreement on Rules of Origin

The Agreement provides that:

1. The laws, regulations and administrative determination of the country of origin of goods are not by themselves contractual or autonomous trade regimes and therefore should not be used to grant tariff preferences to a country from which goods originate.
2. ROO used in non-preferential commercial policy instruments should include application of the MFN[87] treatment, anti-dumping and countervailing duties; safeguard measures; origin marking requirements; and other quantitative restrictions or tariff quotas. Countries such as the lead export markets for Kenya's vegetables and fruits can apply such instruments.
3. Until ROO are harmonized between trading partners (such as ROO relating to members of a REC), WTO members should ensure that:
   - If they use the change of tariff classification criterion to determine the origin of a given product, they must clearly specify the subheadings or headings within the tariff nomenclature which is applied (i.e. by indicating changes in the tariff heading and the new tariff)
   - In cases where the ad valorem percentage criterion is applied, the method for calculating the percentage value added should be indicated in the rules of origin;
   - In cases where the criterion of manufacturing or processing operation is prescribed (i.e. product transformation), the operation that confers origin on the good concerned should be precisely specified.
4. ROO should not be used as instruments for pursuing a country's trade objectives; to create restrictive, distorting, or disruptive effects on international trade. They should not pose unduly strict requirements not related to manufacturing or processing as a prerequisite for the determination of the country of origin. However, costs not directly related to manufacturing or processing may be included in ROO for the purpose of applying the ad valorem percentage criterion
5. ROO applied on imports and exports should not be more stringent than the rules applied to determine whether or not a good is domestically produced and should not discriminate between WTO members, irrespective of the affiliation of the manufacturers of the good concerned
6. ROO should be administered in a consistent, uniform, impartial and reasonable manner. However the rules that state what does not confer origin are permissible.
7. Upon the request by an exporter or importer, assessments of the origin of a good should be issued as soon as possible but no later than 150 days after such request is made, provided that all necessary elements are submitted. Such assessments should remain valid for three years provided that the facts and conditions under which they were made remain comparable.
8. When introducing changes to ROO, WTO members should not apply such changes retroactively.

3. The Agreement on Sanitary and Phytosanitary Measures (SPS)

The Agreement provides that no WTO Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health; subject to the requirement that such measures are not applied in a manner which constitutes arbitrary or unjustifiable discrimination between Members in the course of international trade. The Agreement further provides that:

1. The SPS measures applied by any WTO member country should be based on scientific principles and sufficient scientific evidence, unless in cases where relevant scientific evidence is insufficient. In the latter case, a Member may provisionally adopt SPS measures or guidelines from the relevant international organizations including the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention (IPPC). A Member which lacks sufficient scientific evidence can also use measures applied by other Members; and is allowed to subject such measures to objective assessment of risk before applying them.
2. Countries should accept the SPS measures of other Members which trade into their territories as equivalent measures, even if such measures differ from their own or from those used by other countries trading in the same product, if the exporting country objectively demonstrates to the importing

87. Most Favoured Nation

country that its measures are sufficient to achieve the importing country's level of SPS protection. Reasonable access to the exporting country's SPS measures should be given in this regard to the importing country to enable inspection, testing and other relevant procedures prior to accepting the measures in question.

3. Countries should enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified SPS measures.
4. The process of developing SPS measures should be based on an assessment of the risks to human, animal or plant life or health, and should take into account risk assessment techniques developed by the relevant international organizations (i.e. Codex Alimentarius Commission, the International Office of Epizootics, and the IPPC framework). Also, in the assessment of risks, a country should take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pests or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment methods to eliminate presence of pests.
5. In assessing the risk to animal or plant life or health in order to determine the measure to be applied to achieve protection from the said risks, countries should take into account the relevant economic factors; namely: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing country; and the relative cost-effectiveness of alternative approaches to limiting risks. Countries should also aim to minimize negative trade effects of any applied SPS measures.
6. When establishing or maintaining SPS measures countries should ensure the measures are not more trade-restrictive than required to achieve their appropriate level of SPS protection.
7. In case disputes arise between WTO members involving scientific or technical issues, the concerned countries should inform the WTO Secretariat, which thereafter establishes a panel of experts in consultation with the parties in dispute, which is responsible to giving advice on the issue under contention. The panel is allowed to establish an advisory technical experts group, or to consult the relevant international organizations regarding the dispute.

4. The Agreement on Technical Barriers to Trade (TBT)

The TBT Agreement provides that t no country is prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, or the environment; or for the prevention of deceptive practices. However, countries should ensure that when applying technical regulations, products imported from all WTO Members are accorded equal treatment; including industrial and agricultural products which are subject to the provisions of the Agreement. WTO members should use relevant international standards, guides or recommendations as the basis and reference points for developing their national technical regulations and standards; including:

- The International Organization for Standardization (ISO); regarding voluntary standards (including private standards) and mandatory technical regulations);
- The International Electrotechnical Commission (IEC), regarding electrotechnical standards and technical regulations;
- The International Bureau of Weights and Measures (BIPM) and the International Organization of Legal Metrology (IOLM), regarding metrology; and
- The International Laboratory Accreditation Cooperation (ILAC), and International Accreditation Forum (IAF), regarding accreditation and conformity assessment procedures.

The main justification for recommending international organisations is that non-compliance with standards demanded in most target export markets are amongst the major constraining factors to market access. For example, the 20i5 report by the United Nations Economic Commission for Africa (UNECA)[88] notes that Africa is marginalized in world trade by to poor knowledge in application of technical regulations and standards.

The WTO TBT defines technical regulations and standards/ measures used in trade as substantive requirements that relate to product characteristics, their related processes and production methods, labelling and packaging requirements applicable to products. Specifically, technical regulations and standards include technical regulations, standards, and conformity assessment procedures that are used by governments to achieve public policy goals, including the protection of human, plant and animal health and life, and the environment. Sometimes, countries use such regulations and standards to protect domestic producers from foreign competitors. Technical regulations are mandatory while standards are mostly voluntarily applied by countries. However, when these measures become unnecessarily restrictive, technically complex, less transparent, and difficult to quantify, they end up as trade barriers to trade. There are three categories of TBT measures contained in the TBT Agreement:

- Technical regulations: These are measures that lay down product characteristics and/or their related processes and production methods, including the applicable administrative provisions, for which compliance is mandatory. They also deal with terminologies, symbols, packaging, marking and labelling requirements.
- Standards: These are measures which establish rules for repeated use, guidelines or characteristics of products or related processes, and production methods.
- Conformity assessment procedures: These are measures which are used to determine whether relevant requirements (on goods) specified in technical regulations or standards are fulfilled. They include procedures for sampling, testing, and inspecting goods; procedures for evaluation, verification and assurance of conformity; and procedures for registration, accreditation and approval of institutions mandated to certify, test and inspect goods for conformity to set standards. They are mostly applied to give consumers confidence on the integrity of products. Different types of conformity assessment procedures affect trade differently.

While voluntary technical standards are driven by market forces, failure to comply with them may hinder market entry and/or access. On the other hand, mandatory standards categorized as technical regulations are stipulated in international and/or national law, and failure to comply with them translates into a given product being denied market access. In practice, the distinction between voluntary standards and mandatory technical regulations is becoming less clear as they both are applied as pre-conditions for market entry by government authorities, distribution companies, and consumers.

5. **The Agreement on Anti-Dumping Measures**
   The Agreement provides that a product is to be considered as being dumped, if it is introduced into the commerce of another country at less than its normal value, or if the export price of the product is less than the comparable price of a like product destined for consumption in the exporting country. However, when no sales (or low sales) of the like product in the domestic market of the exporting country do not permit a proper comparison, the margin of dumping should be determined by comparison with the comparable price of the like product when exported to an appropriate third country. If a comparable price does not exist, the cost of production in the country of origin plus a reasonable amount for administrative, selling, and general costs and an allowance for profits should be used the margin of dumping. The Agreement further provides that:
   1. The cost of products should be calculated on the basis of records kept by the exporter or producer who is alleged to have exported a product at a dumping price, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product in contention. The said cost should be determined on the basis of:

88. The Economic Report for Africa; 2015 (Industrialization through Trade)

- The actual amounts incurred in respect of production and sales in the domestic market of the country of origin of the product.
- The weighted average of the actual amounts incurred by other exporters or producers in production and sales of like products in the domestic market of the country of origin.
- Any other reasonable method, provided that the amount of profit shall not exceed the profit normally realized by other exporters or producers on sales of like products in the domestic market of the country of origin.
- In cases where there is no export price or where the export price is unreliable because of a compensatory arrangement between the exporter and the importer or a third party, the export price may be determined on the basis of the price at which the imported products are first resold to an independent buyer.

2. The existence of margins of dumping should be established based on a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differs significantly among different purchasers, regions or time periods.
3. In cases where products are not imported directly from the country of origin but are exported to the importing country through an intermediate country (i.e. transhipped), the price at which the products are first sold to the intermediary country should be compared with the price in the country of export.
4. A determination of injury caused by dumping should be based on positive evidence by conducting an objective examination of both: (i) the volume of the dumped imports and their effect on prices of like products in the domestic market of the importing country, and (ii) the consequent impact of these imports on domestic producers of such products.
5. The examination of the impact of the dumped imports on domestic industry of the importing country should be comprehensive and exhaustive, and should therefore include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilization of capacity, other factors affecting domestic prices, the magnitude of dumping, actual and potential negative effects on cash flows of affected producers, inventories, employment, wages, growth, ability to raise capital, and on effects to potential growth of relevant investments.
6. Based on evidence provided through the examination of the impact of dumping, the affected country may apply provisional measures in the form of a provisional duty or preferably a security (cash deposit or bond) equal to the amount of the anti-dumping duty. The provisional measures should be limited to a short period of between 4 to 6 months.

6. The Agreement on Customs Valuation

The Agreement on customs valuation provides that the customs value of imported goods should be understood to mean the value of imported goods which are to be levied ad valorem customs duties on. The Agreement specifically provides that the customs value should be determined using the following methods:

1. The primary basis for determining customs value of imported goods should be the transaction value, that is the price actually paid or payable in the country of origin to the country of importation, adjusted to include commissions and brokerage fees, the cost of containers, and the cost of packing (labour and materials used), provided that: (i) there are no restrictions on the disposition or use of the goods by the buyer other than restrictions required by law or by public authorities in the country of importation; and (ii) no part of the proceeds of any subsequent resale, disposal or use of the goods accrue directly or indirectly to the seller.
2. If the customs value of the imported goods cannot be determined using the transaction value, then the value of identical, similar, or equivalent goods should be used. However, the identical goods should be sold as exports to the same country of importation and exported at about the same time as the goods being valued. This rule should involve a process of consultation between the customs administration and importer with a view to arriving at a basis of value. For example, the importer may have information about the customs value of identical or similar imported goods which is not immediately available to the customs administration in the port of importation. If there is more than one transaction value of identical goods, the lowest such value should be used to determine the customs value of the imported goods.
3. If the customs value cannot be determined using the transaction value or the value of identical, similar or equivalent goods, then computed value method should be used; which should consist of the sum of: (i) the cost or value of materials and fabrication used in producing the imported goods; (ii) profit and general expenses equal to that usually reflected in sales of goods of the same class of the goods being valued; and (iii) the cost or value of all other expenses incurred in processing the good.
4. If the customs value of the imported goods cannot be determined using the transaction value, value of similar or equivalent goods, or even the computed value methods, then it should be determined using reasonable means based on data available in the country of importation; excluding the selling price of domestically produced goods in the country of importation.
5. Where the conversion of currency is necessary for the determination of the customs value, the rate of exchange to be used should be the duly published rate by the competent authorities of the country of importation.

7. The Agreement on Import Licensing

This Agreement provides that import licensing should be understood to mean administrative procedures requiring the application or other documentation prior to importation into the customs territory of an importing country aimed to achieve specific objectives such as to safeguard security, ensure compliance to specified standards, or to protect public morals, human, animal, or plant life and/or health; other than administrative procedures for customs purposes. Such administrative procedures should not be used to create trade distortions on imports, and the rules for licensing procedures should be administered in a fair and equitable manner. Information on the eligible products subject to import licensing should be published 21 days prior to the effective date of the requirement, while application procedures should be as simple as possible. Additionally, non-automatic licensing shall not have trade-restrictive or distortive effects on imports and should correspond to the measure they are used to implement.

8. The Agreement on Subsidies and Countervailing Measures

The Agreement provides that a subsidy should be understood to mean a financial contribution by a government or a public body which ends up distorting the real market price of a good. Such contributions may include direct or indirect transfer of funds by a government (e.g. grants, loans, and equity infusion, loan guarantees, and tax credits); government provision of goods or services other than general infrastructure, government purchase of goods; government payments to a funding mechanism, or government entrusting or directing a private body to make financial contribution or direct transfer of funds; and other forms of income or price support.

The Agreement provides that all these forms of subsidies are prohibited; and that if a WTO Member country has reason to believe that a prohibited subsidy is being granted or maintained by another Member country, the concerned country should request for consultations with such subsidy granting country, and provide available evidence on the existence and nature of the subsidy in question. The consultations should aim to clarify the facts on the subsidy and to arrive at a mutually agreed solution. However, if no mutually agreed solution is reached within 30 days of the request, the concerned country should refer the matter to the WTO Dispute Settlement Body (DSB) for the immediate establishment of a panel, which then seeks assistance of the Permanent Group of Experts (PGE) to investigate whether the measure in question is a prohibited subsidy. The PGE findings are accepted by the panel without modification, and are thereafter submitted to the countries in dispute and also circulated to all WTO Members within 90 days with a recommendation that the subsidizing country withdraws the subsidy within a specified timeperiod. The DSB also adopts the panel recommendation within 30 days, unless one of the countries to the dispute formally notifies the DSB of its decision to appeal, or the DSB decides by consensus not to adopt the panel report. If the panel report is appealed, the WTO Appellate Body is required to issue its decision within 30 days of the appeal. In case of delays in meeting this deadline, the Appellate Body is required to give reasons for the delay to the DSB together with an estimate of the period within which it will submit its report. However, the dispute proceedings should not exceed 60 days. The Appellate Body report is then adopted by the DSB and unconditionally accepted by the countries in dispute unless the DSB decides not to adopt the Appellate Body's report within 20 days.

In the event the recommendation of the DSB is not followed within the timeperiod specified by the panel, the DSB grants authorization to the complaining country to take appropriate counter-measures, unless a dispute arbitration process is requested by the countries in dispute. The arbitration is handled through the Dispute Settlement Understanding (DSU) mechanism as a final settlement of the dispute, and the arbitrator determines whether the countermeasures are appropriate.

The Agreement also provides for Actionable Subsidies, which disallows WTO members from using a subsidy to cause adverse effects to the interests of other Members, such as (i) injury to the domestic industry of another country, (ii) nullification or impairment of benefits accruing directly or indirectly to other countries, or (iii) serious prejudice to the interests of another Member. The provision on actionable subsides however does not apply to subsidies maintained on agricultural products as provided in the Agreement on Agriculture.

9. The Agreement on Safeguards

The Agreement allows WTO Members to apply a safeguard measure to a product only if the country has determined that such product is being imported into its territory in such increased quantities (relative to domestic production) which cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products. The safeguard measures are supposed to be applied on a product irrespective of its source. However, safeguard measures should only be applied after an exhaustive investigation by competent authorities on the nature of "serious injury" (a significant overall impairment of a domestic industry) or the nature of "threat of serious injury" (serious injury that is clearly imminent). A determination of the existence of a threat of serious injury should be based on facts and not mere allegations. The investigation should allow importers, exporters, and other interested parties to present their evidence and views as to whether or not the application of a safeguard measure would be in the public interest. The findings of the investigation should include an objective and quantifiable evaluation of all relevant factors that have a bearing on the situation of that affected or likely to be affected industry, including the rate and amount of the increase in imports of the product concerned (in absolute and relative terms), the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, employment, and the causal link between increased imports of the product concerned and serious injury or evident threat. The findings should be published unless they are of a confidential nature or they are provided in confidence. If other factors besides increased imports are causing injury to the domestic industry, such injury should not be attributed to increased imports.

If there is sufficient proof as evidenced in the investigation findings that increased imports are causing or threaten to cause injury to the concerned domestic industry, the affected country is allowed to apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. The safeguard measure may be in the form of a quantitative restriction or an increase in import duty, but the measure should not reduce the quantity of imports below the level of a recent period, which should be calculated as the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members are allowed to choose the measures most suitable for remedying the injury or threat situation. The Agreement additionally provides that safeguard measures should not be applied against a product originating in a developing country if the latter's share of imports in the importing country does not exceed 3 per cent for the product in question. In addition, a developing country is allowed the right to extend the period of application of a safeguard measure for a period of up to 2 years beyond the maximum period provided for other countries, which is between 4-8 years.

The Agreement also provides that any country which initiates an investigatory process, makes a finding, and takes a decision to apply or extend a safeguard measure to safeguard serious injury or threat should inform the WTO Committee on Safeguards, which then circulates the information to other WTO Members for information, comments or contestation. If there any contestation, the dispute settlement process as in the case of the Agreement on Subsidies and Countervailing Measures is then initiated. WTO Members are also required to promptly notify the Committee on Safeguards of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications they make on them.

10. The Agreement on Trade Facilitation

This Agreement principally aims to facilitate trade between WTO Members, and requires that each country should promptly publish through the internet the following information in a non-discriminatory and easily accessible manner, to enable governments, traders, and other interested parties to become acquainted with them:

1. Procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;
2. Applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
3. Fees and charges imposed by governmental agencies on importation, exportation or transit;
4. Rules for the classification or valuation of products for customs purposes;
5. Laws, regulations, and administrative rulings of general application relating to rules of origin;
6. Import, export or transit restrictions or prohibitions;
7. Penalty provisions for breaching import, export, or transit formalities;
8. Procedures for appeal or review;
9. Agreements with any country or countries relating to importation, exportation, or transit;
10. Procedures relating to the administration of tariff quotas; and
11. Contact information on its enquiry point(s) for reasonable answering of enquiries by governments, traders, and other interested parties on matters related to importation or exportation.

In addition to provisions of the WTO Agreements, the Asian countries apply numerous regulatory requirements on imported vegetables and fruits; including on categories which are priority exports for Kenya as shown by the case of India in Annex 20. The provisions contained in the WTO Agreements and the specific applicable regulatory requirements therefore forms the Asian selected countries Trade Regimes for Kenyan exports of vegetables and fruits. It is notable that the applicable MFN tariff rates in the lead Asian markets are not high except for India; since in Pakistan, UAE, Vietnam, and Saudi Arabia, a number of tariff lines at HS 6-digit level actually attract 0% duty. Therefore, the issue of concern is the numerous regulatory requirements applied and the fact that the number of regulations differ between product categories, which means a Kenyan exporter must access all the requirements applicable on a product of interest in order to understand how they impact on his product prior to starting the exportation process. Without such focused attention, the exporters will not understand the content of each regulation that may apply on a product of export interest, and therefore will not be able to comply with the regulation/measure. The export consignment in turn will have to spend a lot of time at the entry port as the importer attempts to proof compliance. Failure to comply with each requirement may translate to an import rejection and subsequent destruction at the exporter's cost, or quarantine as an alternative but with the exporter having to bear related costs.

The numerous regulations applied on a given product and variance in regulations for different products translates to a complicated process of having to access all regulations/ measures applied on each product of export interest. This detailed search could be a time-consuming exercise because even if an exporter fully understands all the regulatory measures applicable on one product, he will still have to access the requirements applied on all other products of interest, a process which technically complicates access to Asian markets. Annex 20 demonstrates the complicated process of accessing the Indian market for "fresh or chilled peas (HS 070810)". The measures cut across Import authorisation requirements; Food Safety and standards; Import licensing; Tolerance limits for residues or contamination by certain non-microbiological substances, Testing requirements; Labelling requirements; Packaging requirements; Hygienic practices during production; Storage and transport conditions; Certification; Import inspection; Traceability of producers; Labelling; Marking requirements; Product identity requirements; and Requirement to pass through specified port of entry. Similar but varying regulations/ measures in terms of number apply on other categories of vegetables and fruits imported by India and by the other Asian lead export markets and can be found in the ITC website (www.intracen.org). As a demonstration, the highest number of regulatory measures applied by the Asian lead markets are summarised in table 7 below, while the number of regulatory measures and MFN rates applied in all Kenya's lead markets for each of the priority vegetables and fruits are detailed in Annex 20.

Table 7: Summary for demonstration of products with highest no. of import regulatory measures in Asian lead markets and MFN rates for Kenya's priority export products.

ASIAN TARGET MARKET	HS TARIFF NUMBER AND DESCRIPTION	Number of regulatory measures for product (NB: This product has the highest number of regulatory measures in this country)	MFN rate
India	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	77	30%
Pakistan	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	2	20%
UAE	HS 080440 –Fresh or dried avocados	109	0%
Vietnam	HS 080440 –Fresh or dried avocados	47	15%
Saudi Arabia	HS 080440 –Fresh or dried avocados	92	0%

Source:
https://www.macmap.org/en//query/results?reporter=699&partner=404&product=070810&level=6

2.4.5.2 Trade enabling provisions in the lead Asian countries for fruits and vegetables

Some cross-cutting trade enabling factors apply for the Asian lead markets for Kenyan vegetables and fruits, including:

- Kenya-Asian countries fall within the multilateral trading framework of the World Trade Organization (WTO).
- Most of the countries have a growing middle-class that is interested in consuming fruits (especially avocados), which meet high quality requirement regardless of the price. Some importers, mostly in Middle East also pay upfront, although such payments are risky as they do not involve proper delivery and payment contracts,
- The requirement to provide regular and reliable cargo flights with sufficient cargo space is well assured and supported by Kenya Airways and other international airlines (such as Saudi Arabian Airlines, IndiGo Airlines, Vietnam Airlines, Air Arabia, and VietJet Air); which fly to most export destinations in Asia such as New Delhi and Mumbai (India), Dubai (UAE), Islamabad (Pakistan), Jeddah (Saudi Arabia), and Hanoi (Vietnam).
- Most air and sea freights to Asian destination countries take less than one day compared with EU. For example it takes 5-6 hours by air and 14 days by sea to get to India, compared to EU countries where the journey takes more than 12 hours by air and 28 days by ship to reach most European destinations.
- There is also a lower level of strictness in application market entry requirements (such as those aimed to assure compliance with specified quality standards) in Asian countries compared to EU countries where quality standards are stringently applied on imported fresh produce. Middle East quality standards requirements are considered basic by exporters compared to those applied by EU countries. The lower-level demands on quality requirements are due to the fact that Middle East countries are desert countries and therefore not food producers, which makes them food import dependent and therefore attractive markets for Kenya vegetables and fruits. Additionally, the Middle East markets are larger than those in Europe due to limited choices of procuring their food needs.
- There is a lower level of risks associated with pest attacks on fresh produce in Asian countries than in Europe due to hot temperatures.
- While Vietnam produces a lot of its fresh produce, these products are intended for value addition and subsequent exports to China and other markets. Kenya should therefore utilises the opportunity to export fresh produce directly to Asian markets without value addition except observing the basic requirements for preservation (such as cold storage/ refrigeration), thus avoiding direct competition with Vietnam.

Specific trade enabling factors for each of the five Asian lead markets are analysed below.

1. INDIA

1. **Historical and trade relationships between Kenya and India.**
   Kenya has a long history with India since Indian migration to present day Kenya began following the creation of the East African Protectorate in 1895 by the then British Government. The Indians were brought into Kenya to construct the Kenya-Uganda railway. The Indians thereafter started engaging in retail, distribution, and wholesale commercial activities, which expanded into the present-day banking, manufacturing, hospitality and export activities among other areas which are dominated by investors of Indian descent. The Indians have settled in the major urban areas of Nairobi, Mombasa, Kisumu, and Nakuru among others, with a small minority living in rural areas. According to the World Economic Forum, the population of Indians in Kenya was estimated at 100,000 in 2015. In 2017, Indians were officially recognised by the Government of Kenya as the nation's 44th tribe, which signifies that the original Indian immigrants have grown into a sizeable number since they first settled in Kenya. Currently, Indians do not face any language barriers when communicating with other indigenous races during commercial activities and in other areas of daily life since they are conversant with Kenya's official English and Swahili languages, with some also quite conversant with other indigenous languages. Historical ties between the two countries have also been based on trade in spices, and Kenya continues to have strong bilateral diplomatic relations with the Indian Government.

India-Kenya bilateral trade is also significant, although it has been in favour of India. In this respect, total bilateral trade between the two countries (based on Kenya exports to India and vice versa) amounted to US$ 28.14 billion during the period 2013-2022, growing from US$ 4.05 billion in 2013 to US$ 3.01 billion in 2022. Kenya realised a negative trade balance during the period amounting to US$ 26.43 billion as shown in Annex 22. There are growing trade ties between Kenya and India, as demonstrated the signing of five agreements between the two countries in December 2013 during the Kenya Presidential visit to India. The agreements include a Memorandum of Understanding (MoU) on sharing solutions for digital transformation, an MOU between Indira Gandhi National Open University and the Open University of Kenya, an agreement on cultural exchanges spanning the period 2023-2027, an MoU between the Bureau of Indian Standards and Kenyan Bureau of Standards, and an MoU on cooperation in sports activities.

The Indian market is considered friendlier by exporters in terms of market entry requirements compared to some Asian countries such as China, regarding post-harvest handling requirements (fumigation and temperature control). This is complemented by the long-standing interactions between Kenya and India and the large population of people of Indian descent who facilitates necessary business contacts, making market access for products like avocados which have already found a huge market in the country.

Kenya and India also often collaborate in international forums such as the WTO related meetings, the Non-Aligned Movement, the Commonwealth of Nations framework, the G-77 and G-15 activities, and the Indian Ocean Rim Association for Regional Cooperation. The two countries additionally relate through the African Union which has a long-standing relationship with India, and in which Kenya plays a significant role in the Continental integration process, as demonstrated by her commitment to lead the piloting of the AfCFTA Guided Trade Initiative (GTI) (more on this on the AfCFTA assessment below. In addition:

- 14 Kenyan employees take annual courses at the National Institute of Hydrography in Goa (India) as part of the Indian Technical and Economic Cooperation (ITEC) [89] program. Each year, ITEC provides more than 400 courses at more than 100 prestigious institutions in India, providing almost 10,000 fully-funded in-person training courses.
- In 2016, the Indian Narayana Hrudayalaya Limited (NH) announced plans to partner with Kenyan doctors and international financial institutions to set up a Kshs. 500 million Narayana Health Hospital in Nairobi, a multi-specialty hospital with state-of-the-art tertiary care services. The 130-bed capacity hospital is set to provide patients with affordable quality care inpatient and outpatient services. This investment adds to other well-known Indian sponsored hospitals such as the Nairobi Hospital and Aga Khan.
- In 2023, the India Government announced plans to provide Kenya with a 60-million-dollar concessional credit for a power transmission. Also, India has promised to support the Kenya Government to realise its affordable housing policy project, which will contribute to scaling down slum dwellings. Additionally, both the India and Kenya Governments have entered an MOU on agricultural cooperation, where India will provide a US$ 250 million Line of Credit (LoC) for Kenya's agricultural mechanization.
- Kenyan private companies owned and managed by investors of Indian descent dominate commercial activities in various economic sectors like manufacturing, agriculture, banking and finance, wholesale and distribution, hospitality (including tourism and hotel businesses), and export and import businesses. The current export activities in vegetables and fruits are dominated by investors of Indian descent.

89. ITEC is a leading capacity-building platform of the Government of India Ministry of External Affairs. Established in 1964. ITEC is one of the first institutionalised programmes that establishes international capacity s in the civilian and defence sectors, and has taught more than 200,000 officials from more than 160 nations.

Thus, Kenya and India economic and business relationships continue getting stronger, which justifies the need for Kenya to prioritise the Indian market for exports of fresh vegetables and fruits.

2. **Air and sea transport between Kenya and India.** The air distance between Nairobi and New Delhi is estimated at 6-7 hours, a distance of about 5434.75 km; while the flight time between Nairobi and Mumbai is around 10 hours, a distance of around 4,533 km. Air flight services for both routes are operated by Kenya Airways, Air India, and IndiGo Airlines among other major airlines, which means there is reliable availability of cargo space to New Delhi and Mumbai, thus encourage exports. Thus, freighting fresh vegetables and fruits cargo from Kenya to India is quite convenient as it takes a half-day. Flights from Kenya to India are also daily, thus facilitating efficient trade between the two countries.

3. **Provision of business services in India** The India business logistics sector is a dynamic and complex ecosystem that caters to a wide range of industries and their unique needs. Provision of business services is offered through institutional structures that are coordinated by the country's State Governments. For example, the Entrepreneurship Development Institute of India based in Ahmedabad offers a diverse range of entrepreneurship and knowledge management services, aimed to promote entrepreneurship through education, training, applied research and institutional-building in different sectors in accordance with national priorities and programmes.

The Institute helps existing SMEs and family managed businesses to improve their entrepreneurial competencies and to develop cadres of trainers in entrepreneurship. It facilitates interface between businesses and policymakers, and fosters business networking and business engagements with Central and State Governments. It has established networks with Entrepreneurship Development Institutions to enable individual businesses acquire necessary training and handholding on business development, capacity building, innovation, incubation and digitalization at Central and State Government levels. The Institute has also partnered with major providers of financial and banking services aimed to facilitate efficient access to development and operational business finance; such as the Industrial Development Bank of India (IDBI; which offers financial support for development of the Indian industry), the Industrial Finance Corporation of India (IFCI; which provides financial support to enable diversification of industries in all economic sectors of the country); the State N=Bank of India (SBI, an Indian multinational, public sector banking and financial services institution headquartered in Mumbai, which has a 23% market share by assets and a 25% share of the total loan and deposits market in India); and the ICICI Bank Ltd (an Indian development finance institution which offers a wide range of banking products and financial services for corporate and retail businesses through its network of 5,275 branches across India).

India also has a well-developed transport logistics network, specialized warehousing services, and other value-adding business services providers, which collectively contribute to the seamless flow of goods across the country.

4. **India's economic indicators as trade enabling factors for Kenyan vegetables and fruits exports.** As summarised in Annex 23, India's economic indicators demonstrate the country's high potential as a good market for Kenyan fresh vegetables and fruits. In this regard;
   - India's population grew from a high 1.37 billion in 2018 to 1.42 billion in 2022 or by 3.5%. The urban population comprised an average 9% between 2018 and 2022, growing from 466 million in 2018 to 508.4 million in 2022. In addition to the high and growing population which indicates good purchasing power for domestic and imported goods, India has a growing middle-income class which can consume avocados, mangoes, and vegetable categories which Kenya has not previously managed to export to this market in large volumes. In this respect, Kenya has only concentrated her export efforts on three vegetable categories, namely dried and shelled beans (HS071331), dried and shelled kidney beans (HS 071333), and other leguminous vegetables (HS 071390); while neglecting other fresh produce categories.
   - India's GDP is very high, growing from a high US$ 2.7 trillion in 2018 to a high US$ 3.4 trillion in 2022 or by 25% during the period 2018-2022. The GDP per capita however is low but growing, from US$ 1,974 in 2018 to US$ 2,389 in 2022 or by 21%. The country's GDP grew by 6% in 2018 and then declined to 4% in

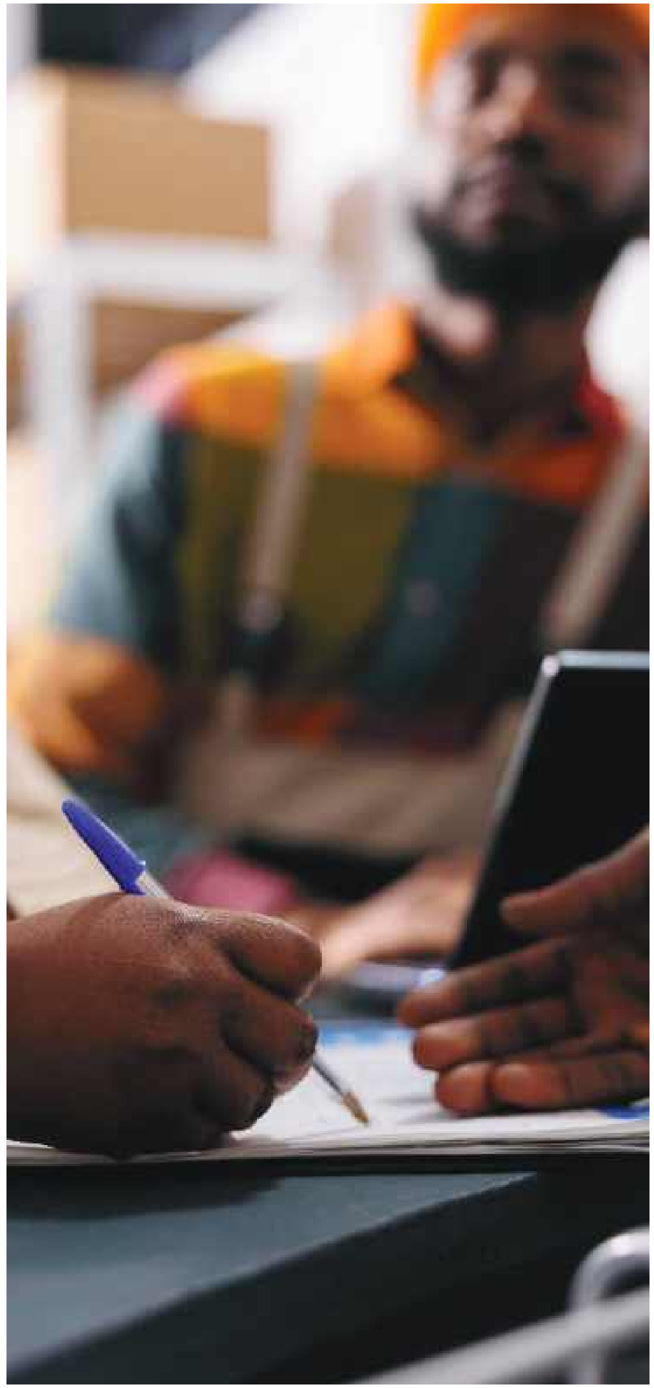
2019 before sliding to a notable -6% in 2020 (due to COVID-19 pandemic effects). Thereafter it rose to a high 9% in 2021 and then declined slightly to 7% in 2022. The GDP per capita growth showed the same trend as the absolute GDP growth.

- The time to import is high as indicated by 2018 and 2019 figures, at 97 hours (about 4 days) in 2018 and 65 hours (2.7 days) in 2019 to complete all import border compliances for a 20ft container of dry cargo; compared to the best countries (Greece and Switzerland) which both achieved 1 hour for similar process. In addition, India took an average of 30 hours in 2018 and 20 hours in 2019 to complete all import documentary compliances for a similar 20ft container of dry cargo compared with the best practices achieved by combined EU block, Canada, South Korea, New Zealand, and Hong Kong; all which have achieved 1 hour to complete a similar process during the same period (2018 and 2019). Unfortunately, comparable data for 2020 to 2022 is not available as the World Bank discontinued documenting the Doing Business Indicators after 2019.

2. PAKISTAN

1. **History and trade relationships between Kenya and Pakistan.** Relations between Kenya and Pakistan were first historically established in the 1960's when Pakistan expressed its support for Kenya in getting independence from British rule. Bilateral relations between the two countries have continued and have been strengthened by membership of both countries to the Commonwealth of Nations framework. Both countries widely use the English language in commercial transactions and official communication, which facilitates efficient bilateral trade. Kenya's exports to Pakistan are dominated by tea, crust hides and skins, cut flowers and fresh vegetable (namely: kidney beans (HS 071333) and leguminous vegetables (HS 071390). In turn, Kenya imports from Pakistan have been dominated by rice, medicaments, worn clothing and woven fabrics, tarpaulins, binders for foundry moulding, and articles for interior furnishings. In addition:

   Within the Asia Continent, Pakistan is Kenya's largest export market for goods, with total exports amounting to US$ 4.48 billion during the period 2013-2022; followed by UAE at US$ 3.12 billion; India at 854.7 million; Saudi Arabia at 729.5 million; Oman at US$ 160.3 million; and Vietnam at US$ 128.3 million. Thus, Pakistan is already a major export market for Kenya, where measures to increase exports of vegetables and fruits should be prioritised as the market is already tested and reliable. Other trade-related issues of importance include:



- In 2004, a Pakistan-Kenya Joint Ministerial Commission (JMC) session was hosted in Nairobi focusing on boosting bilateral trade and economic relations between the two countries, which included Parliamentarians, National Defence University, and Chambers of Commerce and Industry among other business delegates. Three similar follow up engagements have been held between the two countries thereafter during the period 2010-2011, and plans are in the process to finalize dates and an agenda for consultations for a fourth session. Additionally, the Kenya Defence Force and the Pharmacy and Poison Board delegations visited Pakistan during the period 2010-2011.
- Pakistan has been offering various courses and training programmes to Kenya Government institutions, which include Junior level diplomatic courses; which have included an advanced diplomatic course for mid-career level diplomats, an advance railway management course, an international central banking course, an international commercial banking course, and a postal service training course.

2. **Air and sea transport between Kenya and Pakistan.** The air distance between Kenya (Jomo Kenyatta International Airport, Nairobi) and Pakistan (Quetta International Airport) is around 4,824km, which takes about 13h 10min. For sea freight, the distance from Kenya (Mombasa Port) to Pakistan (Qasim Port) is about 6,140km which takes about 9-10 days. Due to the lengthy time taken on sea freight, air freight is used to deliver fresh produce from Kenya to the Pakistan market, while sea freight is used for bulky goods such as avocados. Ships depart every 1-2 weeks from Mombasa Port to Qasim Port.

3. **Pakistan's economic indicators as trade enabling factors for Kenyan vegetable and fruit exports.** As summarised in Annex 24, Pakistan is a good export market for Kenya's fresh produce based on population and overall GDP indicators, but poorly based on GDP per capita growth and time taken to complete import transactions. This implies the market be approached with caution.

    - The Pakistan population stood at 236 million in 2022 having grown from 220 million in 2018 or by 7%. The urban population stood at about 38% of the country's total population in 2022, having grown from 80.6 million in 2018 to 89 million in 2022 or by 10%. This high and growing population is an indication of good purchasing power for domestic as well as imported goods.
    - Pakistan's GDP grew from a high US$ 356 billion in 2018 to 376 billion in 2022 or by 6%, while the GDP per capita declined by 1% during the period 2018-2022 from US$1,621 in 2018 to US$ 1,597 in 2022.
    - The GDP grew by 6% in 2018 and then declined to 2% in 2019 and further to -1% in 2020. Thereafter the GDP grew by 6% in both 2021 and 2022. A similar trend was shown in the GDP per capita annual growth rate during the period 2018-2022.
    - The time to complete import border and other documentary compliances for a 20ft container of dry goods was uncompetitive at an average of 120 hours (5 days) in 2018 and 2019, and at 96 hours (4 days) in 2018 and 2019 respectively. This compares poorly with international best practices, with Greece and Switzerland having achieved 1 hour for import border compliances; and EU block, Canada, South Korea, New Zealand, and Hong Kong achieving an average 1 hour for documentary compliances during the same period (2018 and 2019).

4. **Provision of business services in Pakistan .** The business development services and logistics industry in Pakistan is under-developed while trade logistics services are not well integrated. The 2018 Framework for SME Sector Development in Pakistan[90] for example notes that the Pakistan SME sector is constrained by many inter-related factors, which demands serious government support and effective facilitation to enable enterprises to access financial and technical resources insufficient technical and managerial skills and financial constraints that constrain enterprise development. SMEs find it difficult to access loans from the banks as they maintain weak financial records and don't have collateral security. Most enterprises rely on personal finances and therefore have limited credit opportunities. Furthermore, SMEs also face hurdles in the form of high corruption, less tax concessions, limited regulatory support, and high interest rates.

   However, these gaps are being addressed through support by international agencies such as USAID, which during the Financial Year 2019-20 supported SMEs development through its Small and Medium Enterprise Activity (SMEA) program in the form of Challenge Fund grants of up to U$200,000 to motivate entrepreneurs and innovators. The grants were provided to beneficiary enterprises through the Pakistan Small and Medium Enterprise Development Authority (SMEDA), focusing on enhancing sales revenue skills (such as application of digital marketing tools), improvements of technical skills, and upgrading of innovations. The SMEA program additionally supported the Pakistan Federal and Provincial Governments through SMEDA to strengthen the business enabling environment through development of the Pakistan SME policy, regulatory and institutional framework.

   In addition, the Government of Pakistan National Business Development Program for SMEs (NBDP) implemented by SMEDA supports SMEs by promoting business start-ups, handholding SMEs in their efforts to improve internal efficiencies and to apply value chains development to achieve global competitiveness. The Program also supports improvement of the business enabling environment through evidence-based policy interventions, aimed at building SMEs capacity for engagements with the Government of Pakistan.

3. UNITED ARAB EMIRATES

1. **Historical and trade relations between Kenya and UAE**. Diplomatic relations between Kenya and UAE commenced in earnest in 1982 when Kenya opened its Embassy in the UAE, which the UAE reciprocated by establishing its Embassy in Nairobi in 2012. Since then, diplomatic visits between the countries have been ongoing, with former Kenya President (late) President Mwai Kibaki visiting UAE in 2011, followed by a similar visit by former President Uhuru Kenyatta in 2014. In 2015, Minister of Foreign Affairs and International Cooperation (H.H Sheikh Abdullah Bin Zayed Al Nanyan) officially visited Kenya, which became a catalyst to advancing bilateral relations between the two countries. Through these bilateral engagements, the two countries have agreed to fast-track conclusion of trade agreements and set up a joint panel to explore investment partnerships in oil and gas, technology transfer, agriculture, healthcare as well as development of Special Economic Zones. Additionally:

   - During the United Nations Climate Summit (28th Conference of Parties (COP28) held in Dubai (UAE) in December 2023, the Kenya President had bilateral engagements with the President of UAE (Sheikh Mohamed bin Zayed Al Nahyan), where both countries announced plans to start negotiations on a Comprehensive Economic Partnership Agreement (CEPA). When concluded, this will be the first trade deal to be signed between UAE and an African country; which will deepen non-oil trade and investment opportunities between the two countries, based on the 14 MOUs which were signed on trade and investment promotion, climate protection, and cooperation among others. The CEPA also seeks to remove trade barriers on goods and services trade between the two countries, thus creating increased import and export opportunities and enabling Kenyan companies to benefit from the UAE strategic geographical and logistical positioning (through Dubai) as a global commercial and trading hub.

90. By Dr Syed Akhtar Hussain Shah for the Planning Commission of Pakistan; Ministry of Planning, Development and Reform Government of Pakistan

- Bilateral trade between Kenya and UAE have been on an upward trend for many years, growing by 167% between 2013 and 2022 from US$ 851.5 million in 2013 to US$ 2.16 billion in 2022. Total bilateral trade (based on exports to each other) during the period 2013-2022 amounted to US$ 16.5 billion. However, Kenya has had a huge trade deficit during the entire period; which grew from a negative US$ 224 million in 2013 to negative US$ 1.41 billion in 2022 as summarised in Annex 22. The major Kenya exports to UAE include tea, meat products; avocados, mangoes, vegetables, and cut flowers, while imports from UAE are dominated by petroleum products. The fact that the two countries already trade with each other while avocados, mangoes and fresh vegetables are already part of the Kenya export basket to UAE is sufficient justification for prioritising measures to increase exports of fresh vegetables, avocados and mangoes to UAE.
- In August 2014, UAE announced that it would upgrade its Nairobi Mission as the largest in Africa, and that the mission would actively participate in linking Kenyans with job opportunities in UAE.
- The UAE-based Blue Carbon and the Republic of Kenya signed a Framework of Collaboration (FOC) for the development of REDD+ projects and the origination of carbon credits. The State Department of Environment and Climate Change represented Kenya in signing the FOC, which underlines Blue Carbon's commitment to explore and support Kenya's readiness to implement Article 6 of the Paris Agreement on climate change, whereby carbon credits are generated in the form of Internationally Transferable Mitigation Outcomes (ITMOs) and aligned with national climate targets; aimed at reducing emissions from various environment related sectors such as forests areas, and to conserve, and to promote sustainable management practices and exploration of potentials for carbon removal projects. Beyond the focus on environmental impacts, the FOC additionally aim to bring about transformative economic opportunities in Kenya, characterized by sustainable development investments and the establishment of pathways towards sustainable livelihoods for communities.

2. **Air and sea transport between Kenya and UAE**. The air distance between Kenya (Nairobi) and UAE (Dubai) is around 3,579 km, which takes about 6 hours. On the other hand, the sea freight from Kenya (Mombasa) to UAE (Abu Dhabi) is about 4,652 Nautical Miles (8,616 km), which takes about 15-16 days. Ships depart 2-4 times a week on the sea route which is the preferred mode of transport for dry cargo such as tea and bulky fresh produce like avocados and mangoes.

3. **Language and religion relationships**. Arabic is the official language of UAE, while English is widely spoken and incorporated into commercial transactions and trade logistics. The use of these two languages in UAE favours the current and future trade relations between the two countries since Kenya has a sizeable Arabic speaking population along the coast region and uses English as the official language. It is also to be noted that UAE is a Muslim country, while Kenya also has a sizeable population that practices the Muslim religion, which acts as a trade enabler by facilitating easy bonding of traders between the two countries.

4. **UAE economic indicators as trade enabling factors for Kenyan vegetable and fruit exports**. As summarised in Annex 25:
    - The UAE population is low, growing from 9.14 million in 2018 to 9.44 million in 2022 or by 3%. The urban population is very high at 88% of the total population in 2022, growing from 7.91 million in 2018 to 8.27 million in 2022 or by 5%.
    - The country's GDP is very high, growing from US$ 427.05 billion in 2018 to US$ 507.53 billion in 2022 or by 19%. The GDP per capita is also very high, growing from US$ 46,722 in 2018 to US$ 53,758 in 2022 or by 15%. The country's GDP grew by 4% in 2021 which increased further to 7% in 2022. A similar trend was evident in the growth of GDP per capita which grew from 3% in 2021 to 7% in 2022. The economic indicators demonstrate that the country has very high purchasing power and is therefore capable of consuming increased Kenya vegetables and fruits. This is supported by the fact that the country is a desert and is dependent on imported food products.
    - The only discouraging factors regarding the UAE trade enabling environment are the time and cost to import. In this regard, the time to complete all border entry and documentary compliances for a 20ft container of dry goods stood at 54 hours and 12 hours respectively in both 2018 and 2019. This compares

poorly with international best practices, with Greece and Switzerland both achieving 1 hour for import border compliances; and the EU block, Canada, South Korea, New Zealand, and Hong Kong all achieving an average of 1 hour for import documentary compliances during the same period (2018 and 2019).

- The cost to complete border entry requirements for a similar container of dry goods stood at US$ 678 in 2019 but decreased slightly to US$ 553 in 2019; while to cost to complete other documentary compliances stood at US$ 283 in both 2018 and 2019. This compares poorly with international best practices of an average US$ 1 for similar processes which have been achieved by EU, Liechtenstein, Canada, S. Korea, New Zealand, and Hong Kong.

5. **Provision of transport logistics and business support services**. Emirates Transport (ET), a government-owned public transport provider, manages most of land, sea and air cargo services for goods imported into UAE (Dubai), including the provision of refrigerated transport, packaging and storage services, and the transfer of containers inside and outside the airport area. Transport of goods into inland markets is supported by Etihad Rail which operates the UAE National Railway Network. In addition, there are other private companies which provide transport management services, sea, air, and land freight forwarding services, warehousing and distribution services, track of shipments such as United Cargo and Logistics Ltd.

Regarding business support services, Dubai has emerged as an ideal hub for connecting markets across continents, facilitating the movement of goods and services through air, sea, and land routes; based on its strategic positioning between Asia, Europe, and Africa. UAE has consequently invested in world-class infrastructure, including airports, seaports, logistics parks, and road networks. Jebel Ali Port and Dubai International Airport are for example major logistics gateways where efficient business facilitation services are provided, thus enabling the efficient movement of goods into and out of UAE. Dubai has also emerged as a preferred transhipment hub for international trade transactions (exports and imports) due to its strong trade links and excellent transportation connections. The Dubai logistics sector therefore contributes significantly to UAE economy through efficient transportation, warehousing, freight forwarding, customs clearance, and supply chain management. Most business in export and import businesses *(including people consulted during preparation of this study)* attest that Dubai has a business-friendly environment, which has been achieved through enactment of investor-friendly policies, application of minimal bureaucracy in trade transactions, and establishment of an efficient logistics sector; all which have enabled Dubai to emerge as a key player in the global supply chains.

The Emirates Municipalities have adopted innovative electronic programs referred to as Food Import Re-Export System (FIRS), which captures every information on food trade such as services provided by the Food Trade Control Section of the Food Control Department, imported foods for domestic market, imported foods for re-export, food labels approved for market entry, and accompanying COO issued every day on imported foods. The system also enables electronic approvals, registration of food items, food inspection, performance follow ups and results. The system additionally allows for electronic payment of import fees and displays all food related circulars and other information for the benefit of food traders, food establishments, and other internal and external clients. In addition, the system offers a platform for submitting applications from anywhere in the world, in addition to enabling follow ups and submission of attachments related to such applications. It additionally registers imported food items and links such information to a barcode to enable tracing of the destination of each food item. Regarding import inspection, the system has an advanced food sampling system which itemises the risk associated with consumption of each food item so that regulatory agencies can quickly decide the type of inspection to subject to incoming imports based on the country of origin. This guarantees prompt and correct laboratory results for the collected imported food samples.

UAE has laid out clear instructions which are available electronically that importers and other companies which operate in the customs territory must register with the Department of Economic Development to enable speedy clearance and release of imports at the port of entry.

All import clearance procedures are conducted electronically, thus minimising direct contacts between the customs staff and the imports and their agents. Such procedures include applications to import food, declarations for arrival of food consignments at the port of entry, submission of import documents, confirmation of health certificate approved by the competent health authority in the country of origin to confirm items comply with food standards; confirmation of the packaging list; confirmation of the Halal certificate issued by an authorised Islamic Association in the country of origin and subsequent approval by the Ministry of Environment and Water; confirmation that the import consignment is physically satisfactory for entry into UAE; official no objection letter from the concerned municipality that is going to receive the consignment; the inspection results that a consignment has undergone laboratory analysis; and approval that the imported food items comply with specified standards. The use of electronic import clearance procedures translates into an efficient business support service as it makes the importation process a speedy and seamless process if goods are compliant to market entry requirements, which reduces costs normally associated with importing goods in many countries.

4. SAUDI ARABIA

1. **Historical and trade relations between Kenya and Saudi Arabia.** Relations between Saudi and Kenya have remained cordial since 1979 when late former Kenya's President Daniel Arap Moi visited Saudi Arabia in 1979 and 1983. These first visits were followed by a visit by the former Minister for Foreign Affairs (Hon. Chirau Ali Mwakwere) in 2005, and thereafter by a visit by the late former President Mwai Kibaki in 2012. Both countries also maintain Embassies in each other's country, with opening its Embassy in Saudi Arabia in May 1977, and Saudi Arabia following suite by opening its Embassy in Nairobi in March 1978. The Saudi Arabian Embassy in Nairobi runs an inclusive range of consular services to local, Saudi Arabian, and international citizens in Kenya; which includes: supporting Kenyan citizens to acquire general or specific information regarding Saudi Arabian economy; immigration requirements; Specific contacts based on need; and applications for a Saudi Arabian Visa. Passport services are also available to Saudi Arabian citizens wishing to acquire visa and travel documents in Kenya.

   Bilateral trade between Kenya and Saudi Arabia have been on an upward trend for many years, growing by 184% between 2013 and 2022 from US$ 333.65 million in 2013 to US$ 1.66 billion in 2022. Total bilateral trade (based on exports to each other) during the period 2013-2022 amounted to US$ 6.15 billion. Kenya had a huge trade deficit during the entire period; growing from a negative US$ 260 million in 2013 to negative US$ 1.37 billion in 2022 as summarised in Annex 22. Kenya exports to Saudi Arabia comprise cut flowers, avocados, tea, meat products, coffee and vegetables among other products. However, exports of these products are insignificant compared to Kenya's imports of petroleum products from Saudi Arabia. Nevertheless, like in the case of UAE, the fact that the two countries already trade with each other while avocados and fresh vegetables already form part of the Kenya export basket to Saudi Arabia is sufficient justification for Kenya to prioritise measures to increase vegetables and fruits exports to this market. Other trade enablers include:

   - Saudi Arabia through the Saudi Fund for Development has funded multiple development projects in Kenya; including the Nairobi Water Supply (SR55.84M), Kenya-South Sudan Road (SR 34.59M), Thika-Garissa-Liboi Road (SR55.84M), Mombasa Sewage (SR 45.95M), Kiambere Hydro Electric Power Station (SR 39.96M), Agriculture Sector Support Programme (SR 15M), and Garissa Water Supply (SR 31.41M).
   - In 2011, Saudi Arabia approved a KES. 1.6 billion line of credit to support Kenya in the construction of the 146km Nuno-Mado Gashi road that runs between Garissa and Mandera towns, and a KES. 1.2 billion line of credit to fund five power projects.
   - Saudi Arabia also hosts about 20,000 Kenyan professional and domestic workers.

2. **Language and religion relationships** Arabic is the official language of Saudi Arabia, while English is widely spoken and incorporated into commercial transactions and trade logistics. The use of these two languages in Saudi Arabia favours the current and future trade relations between the two countries since Kenya has a sizeable Arabic speaking population along the coast region while Kenya uses English as its official language. Saudi Arabia is a Muslim country, while Kenya has a sizeable population that practices the Muslim religion, which acts as a trade enabler by facilitating bonding of traders between the two countries.

3. **Air and sea time transport between Kenya and Saudi Arabia**. The air distance between Kenya (JKIA) and Saudi Arabia (Abdulaziz International Airport - JED) is around 2,569 km which takes about 43 hours. Using sea freight, the journey from Kenya (Mombasa Port) to Saudi Arabia (Jeddah (SAJED) is about 4,452 km and takes about 10-11 days 9 hours. Thus, for fresh produce, air freight is the preferred transport mode, while for dry cargo sea freight is used.

4. **Saudi Arabia economic indicators as trade enabling factors for Kenyan vegetable and fruit exports.** As summarised in Annex 27:

   - The Saudi Arabia population grew by 4% between 2018 and 2022 from 35 million in 36.4 million in 2022. The country has a high urban population which took 85% of the country's total population in 2022; growing by 5% from 29.4 million in 2018 to 33 million in 2022. Thus, Saudi Arabia has an attractive captive market for imported goods in the form of a high urban population that mostly consumes imported goods.
   - The country's GDP grew by a high 31% between 2018 and 2022 from US$ a high US$ 846.6 billion in 2018 to US$ 1.11 trillion in 2022. Also, the country's GDP per capita grew by a high 26% during the period 2018-2022, from a high US$ 24,176 in 2018 to US$ 30,436 in 2022. The annual GDP growth rate was an average 3% in 2018, which although declined to a negative 4% in 2020 (due to COVID-19 pandemic), thereafter rose to 4% in 2021 and further to a high of 9% in 2022. The same trend was demonstrated by the growth of GDP per capita during the period. These are additional indicators of the country's high purchasing power which are supportive to consumption of imported goods; including the vegetables and fruits of export interest for Kenya.
   - The issue of concern is the time and cost incurred in completing the importation process. The time to complete import border compliances for a 20ft container of dry goods was uncompetitive at 228 hours (9.5 days) in 2018, which improved to 72 hours (3 days) in 2019; while the time to complete documentary compliances for a similar container was 90 hours in 2018, it improved to 32 hours in 2019. However, these records compare poorly with international best practices, with Greece and Switzerland both achieving 1 hour for import border compliances; and the EU block, Canada, South Korea, New Zealand, and Hong Kong all achieving an average of 1 hour for import documentary compliances during the same period (2018 and 2019).
   - The cost for border compliances for the same container was US$ 779 in 2018, which improved to a lower US$ 464 in 2019; while the cost for documentary compliances averaged US$ 390 in 2018, but however improved to US$ 267 in 2019. This record compares poorly with international best practices which have been achieved by EU, Liechtenstein, Canada, S. Korea, New Zealand, and Hong Kong of an average US$ 1 for similar processes.

5. **Provision of transport and business support services and logistics**. The Jeddah Islamic Port is a trade and business logistics hub which provides containers for delivery of general cargo, solid and liquid bulky goods, and livestock. Saudi Arabia has implemented a 2-hour program for clearance of all cargo at the entry/exit port, an initiative which has contributed to the optimization of customs clearance procedures by reducing the duration of customs clearance from the previous average of 8-9 days in 2018 to the current less than 48 hours, and less than 24 hours for pre-arrival electronic submission of shipments.

   There are also numerous private companies that provide business support services, including business registration, support in manpower hiring, business scale ups, sales, and marketing contacts, top competitors competitiveness analysis, and advice on business growth potentials in various sectors. The Saudi Arabia Government has put in pace a Vision 2030, which encompasses various economic, legal and regulatory reforms aimed to improve the business enabling environment for local and foreign investments, and to diversify the country's economic activities.

5. VIETNAM

1. **Historical and trade relations between Kenya and Vietnam.** Kenya-Vietnam relations are not based on any historical or formal trade relations since neither country has an Embassy or diplomatic mission in the other's territory. However, relations between both countries remain cordial, and both countries seek to expand such relations. For example, in December 2019, the then Kenya Cabinet Secretary (CS) for Foreign Affairs (Ms. Monica Juma) met with the former Vietnam Minister for Foreign Affairs (Pham Binh Minh) in Hanoi. During the meeting, the two dignitaries agreed to establish stronger collaboration in economic, trade, diplomatic, culture, education and IT fields, and to begin negotiations for an income tax treaty. The two officials also agreed to facilitate a political consultation mechanism between the two countries, which are both members of the Non-aligned movement.

   Regarding bilateral trade between Kenya and Vietnam, as summarised in Annex 22, total bilateral trade between Kenya and Vietnam grew by a significant 155% during the period 2018-2022; from US$ 55.8 million in 2018 to US$ 142.43 million in 2022. Kenya exported a total of US$ 128.3 million to Vietnam during the period, while Vietnam exported a total of US$ 591.8 million to Kenya, resulting to a huge trade deficit for Kenya amounting to US$ 463.53 million. Kenya exports to Vietnam have been minor amounts of tea and bran (for animal feeds manufacture) over the period, while Vietnam exports to Kenya have comprised manufactured products such as articles for interior furnishing, electric gadgets, fabrics, binders for foundry mouldings, polymers, acids and beer among other items.

2. **Air and sea transport between Kenya and Vietnam.** The air distance from Kenya (JKIA) to Vietnam (Noi Bai International Airport (HAN) is approximately 8,703km, which takes about 17hrs. For sea freight, the distance is approximately 9,079 km and takes about 15 days from Mombasa to Ho Chi Minh City (VNSGN).

3. **Vietnam economic indicators as trade enabling factors.** As summarised in Annex 26:
   - Vietnam population is high, growing from 95 million in 2018 to 98.2 million as at 2022 or by 3.4%. The urban population takes about 39% of the country's total population as of 2022, nd grew from 34 million in 2018 to 38 million in 2022.
   - The country's GDP is high, growing by a high of 32% between 2018 and 2022 from US$ 310 billion in 2018 to US$ 409 billion in 2022. The GDP per capita also grew significantly by 27% during the period from US$ 3,267 in 2018 to US$ 4,164 in 2022. The country's GDP growth rate was high before the onset of COVID-19 pandemic, standing at an annual rate of 7% in 2018 and 2019, then dropping to 3% in 2020 and 2021, and thereafter rising significantly to 8% in 2022. A similar trend was shown in the GDP per capita annual growth rate during the period.
   - The import process can be rated as average in terms competitiveness; with the time to complete border compliances for a 20ft container of dry cargo standing at 56 hours in

2019 and 2018. This compares poorly with international best practice of 1 hour for import border compliances achieved by Greece and Switzerland; and an average of 1 hour for import documentary compliances which has been achieved by the EU countries, Canada, South Korea, New Zealand, and Hong Kong during the same period (2018 and 2019).

4. **Provision of transport logistics and business support services.** In Vietnam, transportation infrastructure is still weak and inconsistent, translating into too many difficulties in operating and maintaining efficient trade logistics in Vietnam. However, there are several private logistics providers, which predominantly offer warehousing, freight transport, and distribution services for domestic as well as imported cargo.

2.4.5.3 Export Trade Barriers facing Kenya's fresh vegetables and fruits exports to the lead Asian export markets

The trade barriers facing Kenyan exports of vegetables and fruits to the Asian lead markets identified include:

1. There are no existing bilateral trade agreements between Kenya and the Asian countries, which implies no preferential trade tariffs are given on Kenyan originating goods, including fresh produce. This means no formal arrangements governing SPS, TBT, customs, trade defence measures, and resolution of trade obstacles have been agreed between Kenya and the Asia lead export markets for vegetables and fruits. Consequently, the provisions contained in relevant WTO Agreements are applied, but these are difficult for exporters to comprehend. The lack of formal trade relationships between Kenya and the Asian countries also implies that in case of fresh produce exports fail to meet the specified MRLs on use of chemicals, or if presence of pests and diseases is detected, or if there is lack of proper documentation among other issues, a whole consignment may risks being condemned without Kenya having a recourse for intervention.
2. Currently, there is a ban on Kenya imports of avocadoes in UAE and Oman. Although Oman did not emerge as a lead export market except for mangoes (HS 080450) where she has managed to capture 11% of Kenya's export market for this product (based on total exports for the period 2018-2022), consultations with exporters indicate they face serious difficulties in meeting Oman MRL requirements on avocadoes and mangoes. China also demands fumigation of avocados before export from Kenya. A related problem (although from the supply side) is that some farmers harvest avocadoes before ripening. The enormous export opportunities available in UAE and Oman are therefore lost due to a supply side problem that should have been addressed without contention by ensuring no exporter is allowed to harvest unripe fruits for export.
3. Some customers/brokers particularly in Middle East countries (UAE, Saudi Arabia, and Libya) fail to honour payments on fresh produce delivered to them by Kenyan exporters, and court processes have then to be instituted at prohibitive costs. This problem occurs especially when exporters ignore the need to conclude written delivery agreements/ contracts with their foreign customers/ buyers; a major occurrence in Middle East is where customers are not very keen on entering into written contracts on reasons that trust is a better business arrangement than signed contracts in business transactions. When such cases occur, the exporters (particularly the small-scale) are often reluctant to report to the GOK agencies or to their business membership associations/ organisations (BMOs) because they don't trust that GOK or their BMOs will take any positive actions. Some of the BMOs however sometimes report to the Kenyan Embassy in the destination countries, but no concrete actions are ever taken, or when taken are considered as biased in favour of importers who have direct physical contact with the Embassy concerned. The institutions which exporters expect should take actions to resolve encountered NTBs include KEPHIS, KETROBA, MOA (through HCD),

MITI, KENTRADE, FPEAK, FPCK, and KNCCI). Due to high degree of non-action on reported trade difficulties particularly regarding failure by importers to honour payments, the unpaid exporters have the alternative of either instituting legal action in the importing country which is very expensive, or to eventually abandon the case altogether after weeks or even months of failed and frustrating follow ups, which ends up into huge losses for the exporters.

4. In UAE, there are random sampled inspections on each container of avocados at the port of entry to confirm that products comply with specified MRLs on use of pesticides, and that there is absence of pests and diseases in such consignments. If the inspection results show that pesticide residues exceed allowed MRLs, or that there is presence of pests and diseases, the whole consignment is subjected to quarantine at a cost of US$ 1,500 per container which is borne by the exporter. In addition, if the pallets used to pack the avocados are detected to have been mishandled (such as those that crumble during transportation or during inspection), the whole consignment is charged US$ 2,000 per container, although the consignment is still allowed import entry. In October 2023, one of exporters who was consulted in this study informed having incurred a total of US$ 10,500 for 3 containers which were quarantined (i.e. at US$ 3,500 for inspection, quarantine and crumbled pallets per container). The charges on crumbled containers are perceived as unfair since the crumbling is mainly attributed to hasty inspection process at the port of entry which is not the fault of the exporter. In Saudi Arabia, some of the import consignments are subjected to full inspection, and a lot of mishandling of containers occurs during this process, resulting to spoilage of fresh produce. This leads to customers rejecting the consignments.

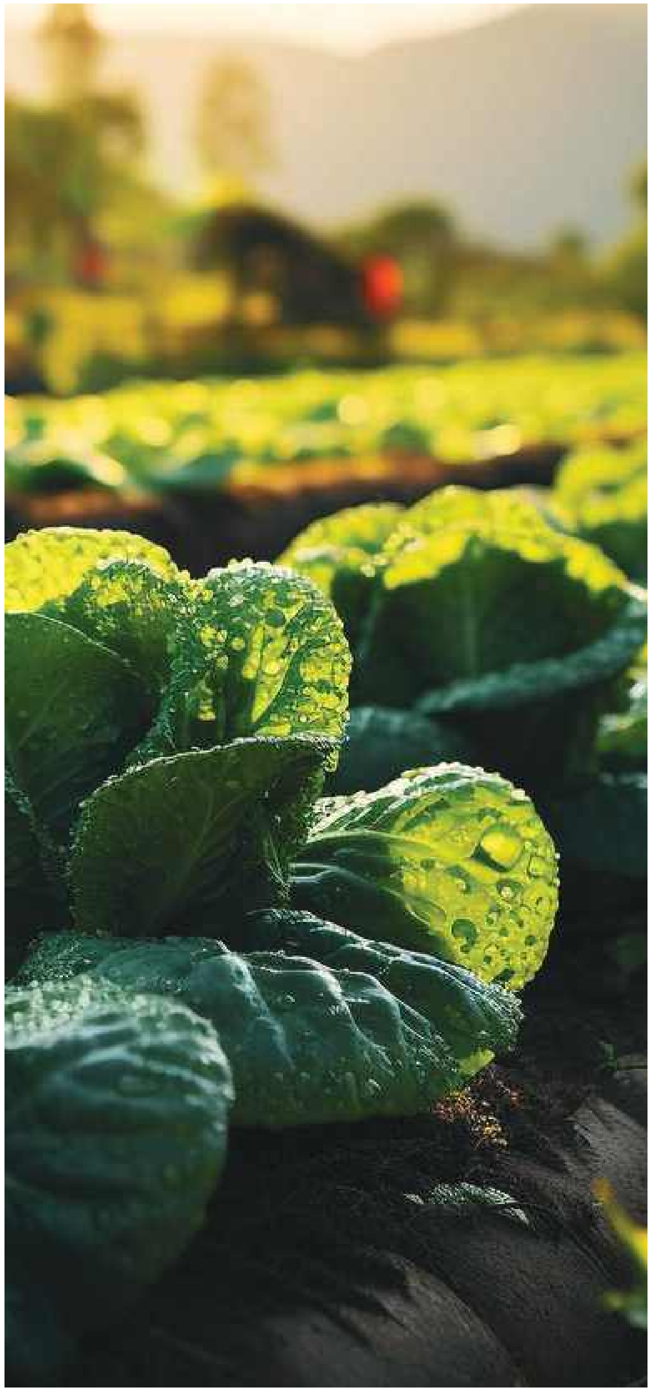
5. KEPHIS as well as other key regulatory agencies involved in regulating farming of fresh produce and authorising exports (such as AFA-HCD and PCPB) are seriously constrained by insufficiency of funding to conduct commodity specific surveillance; an activity which is crucial to providing proof that fresh produce being exported is pest free. The regulatory agencies usually conduct annual surveillance although the activity should be done more regularly if sufficient funds were available. This bottleneck therefore constraints efforts to trace products that may be non-compliant with market-specific regulations up to the farm origin level; early elimination of prevalent pests; and quarantine of areas with high risks of pest prevalence. On quarantine, Kenya through the Ministry of Agriculture in partnership with KEPHIS for example imposed a 10-year self-ban on mango exports between 2011 and 2021, during which Makueni County was zoned off as a quarantine area aimed to control fruit fly using traps and training of farmers. EU then sent inspectors to confirm that the pest had been contained, which enabled this mango-rich producing area to be opened for exports. Some few exporters and HCD have also invested in hot water treatment technology which involves dipping the mango fruits in water at a temperature of 45-60 degrees centigrade for 4-5 hours in order to kill the fruit fly which lodges itself in the fruit during the growth stage, thus causing a lot of harm to exports as it is not possible to detect it until the inspection stage for exports. Attacks on mangoes by fruit fly had resulted into closure of the South African market in 2010; hence the urgent need to provide funding for surveillance to enable early detection of fruits pests and subsequent timely quarantine of areas with high risks of pest prevalence. However, the containment measures (quarantine of production areas and hot water treatment technology) are very expensive for farmers and small-scale exporters, which calls for support by the Government and Development Partners.

6. Although not a demand-side obstacle, the quality of materials for manufacturing boxes/ packaging used for exporting Kenya avocados and mangoes are rated by exporters as poor as the packaging sometimes collapses during delivery of produce to markets. This affects the marketability of these products in major markets such as UAE (Dubai), Saudi Arabia and India, thus enabling major fruit producing countries such as Peru and South Africa to outcompete Kenya. This bottleneck is particularly being faced in India where there is an ongoing trial for commercial shipment of avocados and mangoes.

7. In India, a new NTB has emerged requiring upfront payment of a 30% import levy by exporters on fresh produce. This will in future make entry into the Indian market very difficult. The absence of a bilateral trade agreement between Kenya and India means this obstacle cannot be resolved through bilateral engagements. In this regard, exporters complain that the Kenya Government does not have a dedicated trade committee to negotiate for resolution of this obstacle despite there being a ready market in India characterised by an attractive middle class estimated at 500M people with good disposable income, which can consume substantial Kenyan avocados

and other fresh fruits as long as they meet high quality standards. The fact that there is no language barrier between Kenya and India would enable access to this market if tax related obstacles did not exist.

8. Exports to Middle East countries sometimes are exported through Europe and then transhipped to Asia/ Middle East countries. This is because Kenya has not developed serious logistical services to enable direct exports to Middle East countries, even though there is a ready market for fresh produce in these countries, which additionally are not stringent on import documentation.
9. Some exporters have stopped exporting mangoes to Middle East countries since 2019 due to stiff competition from Egypt, which after procuring seedlings from Kenya started mangoes production. Due to easier road transport logistics and lower costs for delivery of fresh produce from Egypt to Middle East countries, Kenyan mangoes have ended up being more expensive than those from Egypt due to use of expensive sea transport. Kenya's competitiveness is also compromised by the fact that Kenya exports the Apple, Ngowe, and Kent Mango varieties which have lost appeal in world markets in favour of the Alfonzo variety. Kenya therefore needs to establish a more cost-effective transport logistics mode for accessing the Middle East markets and also popularise the Alfonso mango variety in addition to conducting market-targeted export promotion campaigns in lead and emerging export markets.



2.4.5.4 Priority measures to facilitate increased Kenyan exports of vegetables and fruits to the lead Asian markets

The trade barriers facing Kenyan exports of vegetables and fruits to the Asian lead markets identified include:

1. INDIA

On 21st September 2023, Kenya formally kick-started the export of avocados to India with the first shipment delivered to Mumbai. It took eight years of negotiations to get permission from the Indian Government for Kenya to export avocados of various varieties. This development supports the growing two-way trade relations between Kenya and India. Kenya expects that the start of imports of Kenyan avocados by India will contribute to narrowing the trade imbalance between the two countries amounting to US$ -ve26.430 billion between 2018 and 2022 as noted in Annex 22. The government of India has officially opened its vast market of approximately 1.4 billion consumers to the Kenyan avocados, based on compliance with the specific technical and other market access requirements. In this regard, the Government of India, Ministry of Agriculture and Farmers Welfare communicated through a gazette notice dated 16th August 2023 on requirements to allow Kenya exports of fresh avocados into India. Kenya is required to assure that consignments are free from insects/mites of concern; including Ceratitis capitate *(Mediterranean fruit fly)*, Ceratitis cosyra *(Marula fruit fly)*, Ceratitis rosa (Natal fruit fly), Ceroplastes destructor *(White wax scale)*, Cryptophlebia leucotreta *(False Codling Moth)*, Pseudotheraptus wati *(Coconut bug)*, Selenaspidus articulates *(West Indian red scale)*, and Spodoptera littorali *(Cotton leaf worm)*. The assurance of freedom from the specified pests entails application of the following measures by Kenyan competent authorities (KEPHIS, HCD, PCPB); including:

1. Registration of avocado orchards for supply to the Indian market, which should have linkages with approved pack houses.
2. Approval of pack houses to be used for post-harvest processing of avocado fruits.
3. Use of closed trucks for transport of harvested fruits from orchards to the designated pack houses.
4. Sorting, grading, and culling to be done in the approved pack houses for fruits meant for export to India. The avocados should be stored separately from fruits intended for other market destinations.
5. Issuance of KEPHIS inspection certificate on avocados prior to shipment.
6. Methyl bromide fumigation @32g/m3 for 2hrs at 21-degree C or above or equivalent, against Mediterranean fruit fly and Natal fruit fly; or pre-shipment cold treatment at 0-degree C or below for 10 days; or 0.55-degree C or below for 11 days; or 1.1–degree C or below for 12 days.

It is necessary for Kenya to adhere strictly to the above Indian requirements to enable successful market access to the Indian market. In addition, the Kenya Government needs to facilitate increased sensitization of avocado producers on the Indian market entry requirements, including ensuring that farmers stop harvesting unripe fruits as has been alleged to be an increasing practice by avocado associations. The Kenya Government additionally needs to closely follow up conclusion of a trade agreement with India based on the MOUs that were signed between the two countries in December 2023. This will ensure that specific provisions and protocols are agreed regarding SPS, TBT, Customs, ROO, trade defence measures, and resolution of any trade obstacles which may be encountered in the course of trade. The conclusion of these protocols will also ensure that the numerous measures applied by India on imported fresh produce (refer to table 7 above) can be waived for fresh produce exporters who are found to be compliant with Indian market entry requirements. Additionally, the conclusion of specific trade provisions will act as the guiding framework for a clearly enshrined trade regime between Kenya and India; enabling prospective and existing exporters and importers to have a reference framework for trade in goods.

2. PAKISTAN

Since Pakistan is Kenya's largest export market for goods within the Asia Continent, it is necessary to start serious negotiations for a bilateral trade agreement which should encompass all necessary trade provisions, including SPS, TBT, customs, trade defence measures, and a framework for resolution of trade obstacles whenever they are encountered by exporters/importers. Pakistan is already a tested and reliable export market for Kenya, and so formal measures applicable to exports of vegetables and fruits should be prioritised. Exporters should also be sensitized on the contents of all MFN tariff rates and other market entry measures currently applied on imports into Pakistan as summarised in Annex 19.

3. UNITED ARAB EMIRATES

Kenya needs to make a close follow up to the conclusion of the Comprehensive Economic Partnership Agreement (CEPA) that was agreed with UAE in December 2023 during President Ruto's visit. This would ensure that the numerous measures applied by UAE on imported fresh produce (refer to Annex 19) can be waived for fresh produce exporters who are found to be compliant with UAE market entry requirements. It is noted that none of the fresh produce categories attract less than 107 market entry measures in UAE (refer to annex 20). The process of complying with all measures is a frustrating exercise and ends up discouraging prospective exporters from venturing into the UAE market. However, based on the fact that food is among the most vital import in UAE as the country does not produce its own, successful entry into this market would increase export business, since UAE consumers have the purchasing power to pay good prices. Also, UAE (and Dubai in particular) has become the international hub of food trade in the Middle East, with high volumes transacted daily, which is supported by efficiently applied food control procedures, aimed in guaranteeing the safety and quality of imported and re-exported foods. Kenya should take advantage of this lucrative trade by assuring compliance with high food quality standards and control procedures. Kenya also needs to prioritise promotion of mangoes in UAE market as the market entry standards are not as stringent as in EU which has been the traditional market; in addition to promoting growing of the Alfonso mango variety which has become more popular in major world markets. Additionally, Kenyan should sensitise fresh produce exporters on the need to enter into contractual agreements to eliminate the recurrent problem of failed payments and the consequent export losses.

4. SAUDI ARABIA

Similar measures to those relevant to Pakistan need to be prioritised by the Kenya Government to increase exports of vegetables and fruits to Saudi Arabia, including the need to conclude a bilateral trade agreement and to sensitise exporters on MFN rates and market entry requirements currently applied on imports into Pakistan.

5. VIETNAM

The Kenya Government should pursue the initiative started in December 2019 by the then Kenya Cabinet Secretary (CS) for Foreign Affairs aimed to establish stronger collaboration between Kenya and Vietnam on economic and trade fields aiming to eventually conclude a bilateral trade agreement. In the interim, the Kenya Government should facilitate the conduct of a comprehensive sensitisation campaign amongst fresh producers and exporters on the import entry requirements applied in Vietnam. The campaign should encompass all regulatory agencies which play a role in trade facilitation, including the State Department of Trade, KEPHIS, AFA-HCD, PCPB, and Customs Directorate. The producers/exports should be sensitised on the following priority measures/requirements applied in Vietnam:

1. **Product specifications:** Vietnam requires that all import shipments of fresh fruits and vegetables grown and packed for export to Vietnam must comply with regulatory requirements stipulated in Circular No. 13/2011/TT-BNNPTNT of the Ministry of Agriculture and Rural Development (MARD). Specifically on Maximum Levels for Chemical Contaminants, the circular specifies 29 active chemical substances prohibited for use in agricultural products intended for the Vietnamese market. Three of the prohibited chemicals (endosulfan, methamidophos and captan), are currently registered for use in Canada and could for example end up being used in Kenya, which risks rejection of the produce subsequently exported to Vietnam; as it is the responsibility of the fresh produce industry to ensure that there are no residues of these chemicals on any fresh fruit and vegetables destined for Vietnamese market. In addition, residues of all other chemicals must comply with Codex Maximum Residue Limits (MRLs) for export to Vietnam.
2. **Rules of Origin:** Since no regional or preferential trade arrangements are currently in force, the provisions of the WTO Agreement on Rules of Origin apply on exports to Vietnam. Exporters therefore need to be properly appraised on the specific provisions of the Agreement and how to apply the non-preferential certificate of origin for exports to Vietnam.
3. **Duties and taxes on fresh vegetables and fruits imported into Vietnam:** Fresh fruits and vegetables which have merged as priority export products for Kenya attract different MNF tariff rates as shown in Annex 19 but are not subject to VAT at the stage of importation, although thereafter a 5% VAT rate applies during commercial transactions. Products of priority interest to Kenya are particularly those which are subject to 0% MFN tariff rate, as such categories can be easily exported even before Kenya concludes a bilateral trade agreement with Vietnam; including:

   - Dried shelled peas (HS 071310)
   - Dried shelled beans (HS 071331)
   - Dried shelled kidney beans (HS 071333)
   - Dried shelled leguminous vegetables HS 071390

   Other fresh produce categories which are in the Kenya priority list attract an MFN rate of either 13% (Fresh or chilled vegetables n.e.s. – HS 070999); 15% (Fresh or dried avocados – HS 080440); 17% (Mixtures of vegetables – HS 071090); 20% (Fresh or chilled peas – HS 070810, Fresh or chilled beans – HS 070820, and Fresh or chilled leguminous vegetables – Hs 070890); and 25% (Fresh or dried mangoes and guavas –HS 080450). Exporters need to be appraised on these tariff rates.

4. **Certificate for exports of vegetables and fruits to Vietnam:** Article 10 of the Government of Vietnam Decree No. 02/ 2007/ ND-CP on plant quarantine requires that imported fresh produce into Vietnam must satisfy the following conditions:

   - Be accompanied by a plant quarantine certificate issued by the competent plant protection agency of the country of exportation or a certificate of equivalent value; in the case of Kenya, the phytosanitary certificate is issued by KEPHIS.
   - Be free from regulated pests listed in the above Decree and free from foreign harmful organisms.
   - For materials packed with timber, they must be treated according to plant quarantine measures specified in the above Decree.

5. **Customs procedures for exporting vegetables and fruits to Vietnam:** Exports should be accompanied by the following documents:

   - Commercial Invoice
   - Bill of lading and packing list
   - Certificate of origin
   - Certificate of Quarantine
   - Technical or quality standards specification
   - Labelling specifications: name of goods, name and address of the organization or individual responsible for the goods, origin of goods, and other contents according to the nature of each type of goods.

In addition, for all Asian lead export markets, it is necessary for GOK to:

- Coordinate sensitisation of Kenyan producers exporters on the need to conclude legally binding contracts with any importer so as to eliminate the ongoing problem of being swindled by dishonest and rogue import brokers, which results into huge export losses.
- Design and implement a trade risk financing scheme aimed to cover small scale exporters in case their exports (particularly to Middle East countries) are not honoured by importers
- Develop efficient logistical services for exporting to Middle East countries, so as to avoid exportation to these countries through Europe (mainly through Netherlands), as the respective export ends up being branded as Europe instead of Kenya originating, thus diluting efforts to increase Kenya's export market share in fresh produce and to use the known fresh produce brands (such as Kenya beans and avocadoes) to generate repeat orders from major Middle East importers.
- Use the experiences of countries which have successfully penetrated and retained major fresh produce export markets (such as Netherlands, Peru and upcoming Egypt) as lessons learned on how to increase and retain her export market share in her current lead export countries. The main areas of focus in the learning process should include how to establish a more cost-effective transport logistics, how to develop attractive packaging and labelling as marketing techniques, the production and popularisation of internationally trending fresh produce categories (such as the Alfonso mango variety), and how to conduct market-targeted export promotion campaigns in lead and emerging export markets (such as China and Oman).

2.4.5.4 Existing mechanisms to resolve export trade barriers facing the prioritized vegetables and fruits in the lead Asian marketss

Due to the absence of bilateral trade agreements between Kenya and the lead Asian export markets, no mechanisms exist for reporting and resolving export trade barriers which Kenya exporters face or likely to face during exports to these countries. A mechanism should be put in place to enhance transparency and easy follow-up of reported and identified NTBs. Until bilateral trade agreements are concluded between Kenyan and the Asian lead export markets to provide for resolution of trade obstacles, the only option available to Kenya is apply the WTO provisions as enshrined in various agreements on settlement of trade disputes. To help countries in reporting trade obstacles encountered on international trade transactions, the UN International Trade Centre has developed the Trade Obstacles Alert Mechanism (TOAM) (www.intracen.org/resources/tools/trade-obstacles-alert-mechanism-0), in recognition that trade regulations and procedures represent a major source of obstacles to international trade particularly for small and medium-sized enterprises. TOAM is intended to support businesses to overcome identified trade barriers by reporting them through the WTO dispute resolution process. The mechanism specifically allows businesses (including small and medium-sized businesses) to report a trade obstacle during an export or import transaction by dispatching automatic alerts to national authorities and trade operators to prompt necessary responses. If well applied, it can greatly help policymakers and trade support institutions to access up-to-date information on trade obstacles faced in international trade transactions, thus enabling relevant institutions to establish appropriate corrective laws, policies, regulations and reforms, thus enabling resolution of trade barriers. The Mechanism comprises the following components:

1. An online platform which connects companies and fosters exchange of information about trade regulations and procedures.
2. An institutional network which is intended to foster cooperation between different actors involved in the identification and resolution of barriers reported through the online platform and regulations which act as hindrances to smooth flow of trade between countries.

The mechanism specifically captures the following information on trade obstacles:

1. The product and sector affected by a trade obstacle;
2. The reporting country of origin affected by a trade obstacle;
3. The country of destination where the trade obstacle is encountered or applied in the form of a trade regulation, measure of practice;
4. The date when the trade obstacle took place ; and
5. Details of the trade obstacle encountered and its context, such as:
   - Regulatory problems, including export ban, mandatory product quality standards; and inspection, testing, certification, and authorisation procedures to complete an import transaction;
   - Administrative problems (e.g. too many documents an exporter or importer is required to provide by law; or too many counters or border agencies involved in the import approval, process etc.);
   - Insufficient information or lack of transparency of an import procedure (e.g. lack of information or incorrect information on requirements of various regulatory agencies);
   - Arbitrary or discriminatory behaviour of port/border officials at the entry ports; or unhelpful officials and unclear regulations for certifying/approving/inspecting an import;
   - Delays and high costs of clearing imports or unrealistic deadlines to complete an import transaction;
   - Informal and/or exceptionally high domestic taxes and charges on an import excluding official import duties (e.g. Import Declaration (IDF) fees);
   - Limited or inappropriate import inspection facilities; and incompetent officials responsible for inspecting and authorising import transactions;
   - Lack of recognition of national procedures or regulations for clearing exports in originating country by the import destination country;
   - Lack of regulatory framework for conducting imports in the import destination country;
   - Inadequacy of skills and human resources for inspecting, clearing, and approving imports;
   - Other obstacles encountered on imports in the import destination country; and
   - Attachment of physical proof of the obstacle if available.

From the foregoing, the TOAM as currently configured is a useful tool for enabling countries to report and provide proof of trade obstacles encountered on their exports to target markets. The information provided can be used as the basis for conducting investigations on the impact of the trade obstacles as provided under the WTO Dispute settlement Mechanism. Kenya should increasingly utilise the TOAM to report on any difficulties encountered while exporting particularly to the Asian countries which have emerged as key export markets for fruits and vegetables, until bilateral trade agreements are concluded with these countries, which would consequently be expected to provide a framework for resolving trade obstacles/disputes through bilateral consultations. Some of the horticulture sector trade related obstacles which have to-date been reported through the TOAM by various countries and which should be of interest to Kenya are presented in Annex 27.

2.4.6 Assessment of African Continental Market as a Future Market for Kenyan Fruits and Vegetables

2.4.6.1 Overview of the African Continental Free Trade Area Agreement

The African Continental market has been assessed due the potential export opportunities which are expected once the African Continental Free Trade Area Agreement (AfCFTA) Agreement becomes fully operational. The AfCFTA Agreement is not yet in force pending ratification by the required14 countries. Eleven (11) countries had ratified the Agreement as of December 2023, with three countries are remaining to attain the required threshold of 14 countries to enable the Agreement to enter into force. The ratifying countries are Botswana, Burundi, Egypt, Eswatini, Kenya, Namibia, Rwanda, Uganda, South Africa and Zambia and Zimbabwe. In the interim, MFN tariff rates therefore apply on goods traded between AU Member States, unless trade transactions are conducted within the framework of preferential tariffs applied through the framework of the 8 African RECs[91] which are recognised by the African Union (AU). For Kenya, trade with other African countries outside the EAC regional economic block is conducted through the COMESA framework. However when the AfCFTA Agreement enters into force, the AfCFTA duty and quota free market provisions will apply; subject to compliance with the specified AfCFTA rules of origin (ROO).

Closely related to the AfCFTA, the Tripartite Free Trade Area (TFTA) Agreement[92] has been concluded, and the wider agriculture sector stakeholders perceive the Tripartite Free Trade Area ((TFTA) as a more effective regional integration initiative than the AfCFTA. This is because the level of liberalisation achieved to-date on the TFTA is higher than what has been achieved under the AfCFTA framework. The TFTA is a regional integration initiative which aspires to merge the EAC, COMESA, and SADC RECs into a Tripartite Free Trade Area (the TFTA). The overriding objective of the TFTA is to contribute to the broader objectives of the African Union by accelerating economic integration and sustainable economic development, leading to poverty alleviation and improvement of quality of life for the people of the Eastern and Southern African region. The status shows that:

1. Eleven (11) countries have so far signed and ratified the TFTA; namely Botswana, Burundi, Egypt, Eswatini, Kenya, Namibia, Rwanda, South Africa, and Uganda, Zambia, and Zimbabwe.
2. Seven (7) countries have signed but not ratified the Agreement; namely Comoros, Djibouti, DR Congo, Malawi, Seychelles, Sudan, and Tanzania.
3. 10 countries have not yet signed the Agreement; namely Angola, Eritrea, Ethiopia, Libya, Madagascar, Mauritius, Mozambique, South Sudan.

91. Regional Economic Communities. Africa has 8 RECs which are recognized by the African Union (AU) as the building blocks for the African integration process; namely: (1) UMA – Arab Maghreb Union; (2) COMESA – Common Market for Eastern and Southern Africa; (3) CEN–SAD: Community of Sahel–Saharan States; (4) EAC - East African Community; (5) ECCAS – Economic Community of Central African States; (6) ECOWAS – Economic Community of West African States; (7) IGAD – Intergovernmental Authority on Development; and (8) SADC – Southern African Development Community
92. The Tripartite FTA comprises 28 countries which are members of EAC, COMESA and SADC regional integration blocks.

Only three more ratifications are needed for the TFTA to enter into force. The Agreement has already concluded all necessary protocols necessary for trade liberalisation to take effect in the regional block; including procedures for elimination of import duties, elimination of non-tariff-barriers and quantitative restrictions, rules of origin, customs cooperation and trade facilitation, transit, trade remedies, anti-dumping and countervailing measures, safeguard measures, technical barriers to trade, sanitary and phytosanitary measures, special economic zones, and institutional arrangements to facilitate implementation of the TFTA.

2.4.6.2 Trade-related provisions contained in the AfCFTA Agreement

The African Continental Free Trade Area (AfCFTA) was founded in 2018 by the 55 Member Countries of the African Union (AU), and trade provisions were projected to become operational in January 2021. The AfCFTA is considered as the largest economic integration block in the world in terms of the number of participating countries since the formation of the WTO. As at May 2022, 43 (78%) of the 55 AU Member States had deposited their instruments of ratification. The full implementation of AfCFTA has the potential to foster industrialization, job creation, and investment within AU Member States, thereby improving the competitiveness of Africa countries in world markets in the medium to long term. The AfCFTA offers a market size of over 1.2 billion people and a Gross Domestic product (GDP) of US$ 3.4 trillion for the 55 AU Member States. While there has been some success in removing import duties under the framework of the African RECs tariff liberalisation programmes, a range of non-tariff and regulatory barriers still raise transaction costs, thus limiting the movement of goods, services, people and capital across African borders. Visa requirements have also contributed to limiting movements across African borders, although the official launch of the Single African Air Transport Market (SAATM) in January 2018 by Benin, Capo Verde, DR Congo, Côte d'Ivoire, Egypt, Ethiopia, Kenya, Nigeria, Rwanda, South Africa, and Zimbabwe is expected to facilitate more efficient movement of goods and people across the Continent. SAATM has the primary goal of facilitating implementation of the 1999 Yamoussoukro Decision by AU Members, and to enable African countries to establish a framework for liberalisation of air transport services, as well as to facilitate fair competition between African airlines. This means that all countries which sign the SAATM will lift market access restrictions for airlines, remove restrictions on ownership, grant each other extended air traffic rights, and liberalise flight frequency and capacity limits. Both passenger and cargo aviation are included in SAATM, which also seeks to harmonise safety and security regulations in aviation.

Physical and communication infrastructure networks across the Continent have been poorly provided (particularly road, rail and sea freight, and ICT connectivity), thus contributing to limited outreach and connectivity of African markets. Containerization poses a challenge even for large producers, and the prospects of aggregation and consolidation of goods produced especially by small-scale producers have been limited. Language barriers has remained an obstacle to trade integration although it is progressively being broken through adoption of English, French, Arabic, Portuguese, and Kiswahili as the main languages for trade transactions and other forms of communication across the Continent. In efforts to address these bottlenecks, the AfCFTA was therefore established to pursue the following objectives:

- To create a single market for goods and services, and to facilitate movement of persons in order to deepen the economic integration of the African continent in accordance with the Pan African Vision of "An integrated, prosperous and peaceful Africa" which is enshrined in the African Agenda 2063;

- To contribute to efficient movement of capital and natural persons across territorial borders, and facilitate building of investments based on the ongoing initiatives of the State Parties and RECs;
- To lay the foundation for the establishment of a Continental Customs Union;
- To promote the attainment of sustainable and inclusive socio-economic development, gender equality and structural transformation of the AU Member States;
- To enhance the competitiveness of AU Member States in the global market;
- To promote industrial development through diversification and regional value chains development, agricultural development and food security; and
- To resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes.

The AfCFTA has concluded the Trade in Goods Protocol to guide trade in goods amongst AU Member States, which is further supported by similar trading arrangements pursued by the RECs. The objective of the Protocol is to boost intra-African trade in goods through progressive elimination of tariffs on goods traded between African countries. It therefore sets out rules and procedures for trade in goods between African Member States in line with Article 3 of the AfCFTA Agreement. The AfCFTA tariff liberalisation as specified in the Protocol is broken down into 3 phases, namely:

1. Phase 1 which comprises category A products, and where 90 percent of the national/customs territory tariff lines were to be liberalised with effect from 1st January, 2021, to be completed within a period of ten (10) years for Least Developing Countries (LDCs) and five years (5) for Developing Countries.
2. Phase 2 which comprises category B products that are considered sensitive, and which constitute seven (7) per cent of national/customs tariff lines; which were to be phased down within 10 years for Developing Countries and thirteen years (13) years for Least Developing Countries, starting from the 6th year after coming into force of the AfCFTA Agreement.
3. Phase 3 which comprises category C products, which were to be excluded from tariff liberalisation within AfCFTA Member States. The said products constitute three (3) per cent of national/customs tariff lines which do not exceed ten (10) percent of the value of the intra-African trade. The list of category C products are subject to review and negotiations after every 5 years, but are eligible for trade under WTO MFN clause, national tariff rates, or the CET rates provided in case of the existing Customs Unions within the Continent.

The key market access provisions of the AfCFTA Agreement relating to trade in fresh vegetables and fruits are thus guided by the Trade in Goods Protocol; which specifically aims to enhance efficiency in application of customs procedures, ensure efficient trade facilitation and transit of goods across borders; enhance cooperation in application of TBT and SPS measures; and enhance development and promotion of regional and continental value chains; based on implementation of provisions contained in the following key annexes:

1. Customs Co-Operation and Mutual Administrative Assistance;
2. Trade Facilitation;
3. Non-Tariff Barriers; (iv) Technical Barriers to Trade;
4. Sanitary and Phytosanitary Measures;
5. Transit Trade; and
6. Trade Remedies.

The Protocol additionally contains a dispute resolution mechanism (https://tradebarriers.africa/), aimed to facilitate the elimination of Non-Tariff Barriers (NTBs) to ensure that trade disputes are handled fairly and efficiently. On Rules of Origin (ROO), some Member States have expressed concerns that the rules specified in the Protocol are too complex and may be difficult to implement. Non-implementation of the ROO could therefore lead to delays and uncertainty in intra-African trade, thus undermining achievement of potential benefits expected through the AfCFTA Agreement; including achievement of a single market, new business opportunities, and higher levels of economic growth and development. Despite these concerns, the Protocol on Trade in Goods represents a significant step towards achieving the African Continental economic integration.

Assessment of the progress so far achieved on intra-African trade based on provisions of the AfCFTA Agreement shows that commercially significant trade is yet to occur, primarily because of the delayed conclusion of AfCFTA Phase 1 negotiations on trade in goods and services, and contentions on ROO. According to the UNCTAD 2021 Economic Development in Africa Report, *"intra-Africa trade stood at a low 14.4% of total African exports in 2020, which could be increased by about 33%, thus cutting the Continent's trade deficit by about 51%. Overall, the projected* *borderless trade estimated at $3 trillion could be instrumental in reversing current trends in poverty, inequality and growth in the Continent".* Pending conclusion of the Phase 1 negotiations (trade in goods and services, and ROO), the AU decided to test the efficacy of the ROO provided in the Protocol on Trade by establishing the AfCFTA Guided Trade Initiative (GTI) (https://au-afcfta.org/2023/10/a-year-of-trading-under-afcfta-a-rwandan-businesswomans-story/). The GTI was launched by the AfCFTA Secretariat in Accra (Ghana) in October 2022, aimed to allow commercially meaningful trade transactions, and to test the operational, institutional, legal and policy environment governing trade in goods under the AfCFTA framework. Eight countries out of the 29 AU Member States countries that had submitted their tariff offers by mid-2023 met the requirements to pilot the GTI (Cameroon, Egypt, Ghana, Kenya, Mauritius, Rwanda, Tanzania and Tunisia). Trial shipments under the GTI have been exported based on the AfCFTA ROO, including:

- Kenya shipped its first consignment of Exide batteries to Ghana on 23rd September 2022. As of December 2023, Kenya had successfully sent a total of 35 consignments to Ghana, Nigeria, Togo, and Mozambique;
- Tunisia shipped its first consignment of 60 tonnes of resin valued at €90,000 to Cameroon on 17th July 2023;
- Rwanda exported its first consignment of coffee to Ghana on 30th September 2022;

According to the AfCFTA Secretariat, the products earmarked for trade under the GTI initiative in line with the AfCFTA focus on value chain development include ceramic tiles, batteries, tea, coffee, processed meat products, corn starch, sugar, pasta, glucose syrup, dried fruits, and sisal fibre. Increased use of the GTI during the pilot phase will help to test the strengths and weaknesses of AfCFTA regulatory instruments, thus enabling early review of provisions which are trade restrictive to make their application more business friendly.

On tariff liberalisation, 88.3% of the tariff liberalisation offers had been concluded as of November 2022, which is close to the target 90% of tariff liberalisation during Phase 1. The main contentious tariff lines that are stalling conclusion of the target to achieve 90% tariff liberalisation include textiles and clothing, sugar, automotive goods and edible oils. Delays appear to be driven partly by conflicts between national interests and Continental aspirations *(as provided for in the AfCFTA Agreement)*, change in political regimes of AU Member States, and changes in personalities of negotiators. These contentious issues are closely linked to changes in political and socio-economic policies of many countries every time a new political regime comes into office.

Beyond the negotiations on tariff liberalisation, ROO, TBT, and SPS, several other complementary initiatives have either been launched or are underway, including:

- Oversight institutions such as the Council of Ministers, Committee of Senior Trade Officials, and Committees of Trade Experts, which have been established to guide the AfCFTA implementation;
- The platform set up to monitor and address non-tariff barriers to trade within the continent https://tradebarriers.africa/. ;
- The Pan-African Payment and Settlement Scheme, which was launched in January 2022 to facilitate inter-currency payments under the AfCFTA;
- The launch of the Dispute Settlement Mechanism for resolving trade disputes;
- The Afro-Champions initiative, which connects African private sector leaders and public officials in through the AU, aimed to support AfCFTA implementation process;
- A US$10 billion AfCFTA Adjustment Fund, signed in Feb. 2022 with support by the African Export-Import Bank
- The launch of the African Trade Observatory, which serves as a data repository for tracking changes intra-African trade volumes, and to monitor the AfCFTA implementation process its impact;
- The launch of the AfCFTA Country Business Index, an ease-of-doing-business index focused in supporting AfCFTA implementation by identifying and monitoring progress on the elimination of trade barriers and bottlenecks affecting the private sector; and
- Also, after the 9th AfCFTA Council of Ministers Meeting in July 2022, a few other advancements have been achieved; including: the launch of the AfCFTA ROO Manual; the launch of the AfCFTA e-Tariff Book; and the launch of the Initiative on Guided Trade.

Other aspects of the AfCFTA which are being negotiated include women and youth in trade, investment, competition policy, digital trade, and intellectual property rights. Annex 18 summarises the AfCFTA negotiating phases and the applicable AfCFTA Protocols.

2.4.6.3 Export Trade Barriers on Kenyan vegetables and fruits to African countries

Barriers to Trade in the Context of African Continental Free Trade Area include:

1. **Poor transport Infrastructure and networks**
   The absence of efficient transportation networks and un-integrated cross border infrastructure (roads, rail and air transport) increases delays in clearing goods at exit/entry border ports and the cost of transporting products to intended markets. There are poor logistics for delivering goods to African markets. For example, Kenya has few ships that deliver goods such as avocadoes directly to South Africa (SA) since the re-opening of this market in 2017. The implication of this bottleneck is that delivery ships have first to travel to EU to deliver exports, and thereafter pass through SA to deliver the Kenyan avocados, thus lengthening the journey and increasing transport costs. Coupled with inappropriate packaging and lack of storage infrastructure at border stations, this leads to high rates of post-harvest losses. Even where transportation routes exist, cartels dominate the African trading landscape by controlling pricing, which ends up frustrating new entrants in cross border trade. In addition, there are a plethora of illegal customs checks and charges at border stations, and multiple police roadblocks across Africa, which require some form of facilitation payments before passage of cargo, despite the delivery trucks and suppliers having all legally required documentation. The delays and illegal charges further exacerbate the high rates of business losses incurred when transporting produce to markets. The average cost to transport a container within West and Central Africa for example is estimated at US$ 2.43 per kilometre which is 1.5 and 2.2 times the freight rates applied in South Africa and the United States respectively. For African land-locked countries, transport costs represent on average 45 per cent of the value of imports and 35 per cent of exports, much higher than the global averages of 5.4 per cent (of imports) and 8.8 per cent of exports. In Southern Africa countries, road freight rates for food and commodities are high primarily due to lack of return loads and low levels of competition) *(tralac, 2016* https://www.tralac.org/discussions/article/9364-transportation-costsand-efficiency-in-west-and-central-africa.html;and https://www.tandfonline.com/doi/full/10.1080/0376835X.2018.1456905).

2. **Transport Logistics.**
   While digitalization of transport logistics (including enhanced tracking systems, digitized flows of information, automation of trade transactions and import/export clearance systems) are a significant driver of economic growth, Africa lags behind in digitalising trade systems. The African road transport industry for example has previously been characterised by poor reliability, insufficient liability, high transport costs, and poor organization of the road transport industry. These bottlenecks are severe deterrents to efficient freight transport and cargo security in the Continent, where road transport handles an average of 85 percent of freighted cargo[93]. Sub-Saharan African (SSA) economies which are export-commodity-dependent particularly lag in improving and harmonising their transport policy frameworks. The region also faces huge infrastructure deficits and cross-border trade barriers which result in a broken supply chain that negatively impacts economic growth. In the recent past, efforts have been initiated with support of Development Partners[94] aimed to improve the time and cost efficiency and security of transporting goods across borders.

93. As noted by Damilola Kuteyi and Herwig Winkler; February 2022 in their study on "Logistics Challenges in Sub-Saharan Africa and Opportunities for Digitalization"

94. Development Partners supporting improvements in trade logistics include TMA through establishment of One Stop Border Posts (OSBP) and Integrated Border Management Procedures (IBM), the Single Window System, the Electronic Cargo Tracking System (ECTS), and harmonisation of trade related protocols (such as SPS), and also the World Bank among others.

The enhanced emergence of efficient logistics systems and the scaling of private sector-led solutions leveraging on innovative technologies will enhance transparency and efficiency in clearing goods at entry and exit borders. The Kenya single window system is a good example of innovative solutions to speeding up clearance of cargo at entry and exit borders as it involves all government departments and agencies involved in international trade transactions, thus ensuring that more than 35 permits/ licenses/certificates required by various port/ border agencies are issued on timely basis. The KRA Customs Electronic Cargo Tracking System (ECTS) has additionally contributed substantially to ensuring that cargo intended for the neighbouring countries is tracked continuously until it reaches the intended markets, thus eliminating risks of diversion into unintended markets. Both the SWS and ECTS have enabled speedy clearance of import/export cargo. Nevertheless, while Kenya as well as other neighbouring countries within the EAC economic block (particularly Rwanda, Tanzania, and Uganda) are making progress in digitalising their transport and clearance systems, other intended markets within EAC (notably Burundi and South Sudan) are still lagging in such initiatives. Additionally, other countries outside EAC which could be major future markets for Kenyan fresh produce also need to be integrated into the digital trade initiatives.

A major challenge hindering efficient cross-border trade is that overload control measures (allowable gross vehicle mass (GVM) and axle load specifications) applied by AU Member States are at great variance. Thus, a delivery truck which has been approved as conforming to the overload control measures in the origin country will often be accused of not conforming to specifications of a transit country or to specifications of the destination country, if the GVM or axle load limits of the transit/destination country allow for lower limits. The truck so accused may be required to strip off the excess weight, and be subjected to legal persecution and charges. In addition, the weight that is stripped off the alleged overloaded trucks must be transported to the destination market using additional trucks hired purposely to transport the excess weight, which becomes an extra transport cost not factored into the exporter's invoice. The result is that transporting goods across borders is uncompetitive and unattractive.

The poor infrastructure networks in most African countries also reduces the cost competitiveness of local products versus imports from outside the continent. The limited shipping and transport logistics routes means that products must go through longer routes to reach their intended African markets. For example, the missing road links and lack of a railway between Kenya and North and West Africa countries translates to high cost of transporting goods by sea to intended markets.

3. **Payment Systems**

   Inefficient and ineffective payment systems and methods are applied by most African countries due to the lack of a single currency and un-harmonised financial systems. This increases transaction costs and limits transparency and accountability in cross-border trade. It is imperative that African Governments work speedily in developing harmonised banking regulations and supervision mechanisms, and in adopting a single currency to be applied in electronic cross-border payments as part of efforts to increase intra-Africa trade.

4. **Limited Market Linkages**

   Many Africa exporters struggle to find new customers in other African markets due to lack of information on contacts, applicable prices on goods, cost-effective trading routes; applicable rules of origin, quality standards and SPS among others. In addition, African countries apply cumbersome processes for registering trademarks, obtaining product registration and food safety licenses, and differing requirements and standards on goods. Getting partners to promote market linkages with potential customers and to support the establishment of efficient and effective supply chains and distribution channels is also very cumbersome while it is a priority for meaningful cross-border trade. It is also noted that most African countries have closer ties with customers in Europe and North America than with customers in Africa. It is expected that the African Trade Observatory *(launched in December 2019 to fast-track trade and regional/continental integration and to build knowledge amongst African businesses of potential market opportunities)* will close this gap by providing exporters with information on applicable rules and procedures, customs duties, trade remedies, trade regulations, quantitative and qualitative data on trade and market opportunities, major competitors for products traded in target markets, potential regional/continental value chains; trade facilitation institutions in destination markets, and the dos and don'ts of trading in each African country. The implementation of ATO will require a multi-pronged approach, leveraging Chambers of Commerce, producer associations, SME hubs, and regulatory agencies; necessary to provide an appropriate mapping of the entire business and trade ecosystem to accelerate formation and/or strengthening of business linkages in the Continent.

5. **Quality standards**

A specific trade barrier facing fresh produce exports relates to compliance with MRLs. For example, when Kenya introduced growing of avocadoes in the 1970s and 1980s, a South Africa was a major target market. However, farmers overused pesticides in growing of avocados, and as a consequence, South Africa introduced an import ban on Kenyan avocados in 2007, which went on for 10 years thus affecting the growing of avocadoes in Kenya. In the interim, South Africa started growing avocados for its domestic market, and by the time the import ban was eventually opened in 2017, the SA avocado market Kenyan exporters due to stiff competition from the SA domestic producers.

At the Continental level, Africa widely lacks accepted and known brands which can be associated with product labels and grading standards as a mark of quality products. This weakness ends up limiting cross-border trade in high-quality and consistently delivered produce based on needs of customers. There is absence of a database that lists traditional names of African produce, their botanical names, standards that adequately describe a trade product, and a grading system to ease communication and build trust between suppliers and customers. To achieve this goal, there is need for national, regional, and African Continental[95] standards organizations which work in collaboration with the RECs, the AU, the AfCFTA Secretariat, and international standards setting bodies such as Codex Alimentarius (the joint FAO/WHO Food Standards Programme) to take the lead in consolidating and streamlining an open-source system which outlines food safety and grading standards which are acceptable across Africa. An additional bottleneck to trading across African borders is that most African production systems and procedures are not streamlined in terms of processes, systems and procedures for production, assurance of quality control, application of trademarks, and adherence to food safety specifications; to assure that such processes, systems and procedures are associated with known tradenames. Closing this weakness would make it easy for SMEs to procure African produced goods for trade across borders with sufficient confidence that they are safe and reliable for use and can be traced to the producer in case of risks to human, animal, and plant health, or in case of harm to the environment. Closing this bottleneck will require collaborative agreements between national governments and the RECs to create a seamless flow in trading goods across borders. This would also ensure that if one product is registered in Kenya for example, it can be sold across other Africa countries with high level of confidence that goods procured from Kenya can be trusted as they are produced based on credible systems (for example those applied for food items). It is also important to develop a shared database and information system for use in validating the nature of goods produced in African countries. These measures would facilitate promotion of African brands across the Continent, including food products that are certified regionally and internationally.

African RECs have not concluded Mutual Recognition Agreements to enable mutual recognition of standard marks issued by the competent body in the good origin country by the importing country.

95. There are four African Continental standards organisations which are recognised by the African Union; namely: (i) African Organization for Standardisation (ARSO), which was established by the AU with assistance by UN Economic Commission for Africa (UNECA) in 1977 to coordinate standards development, harmonization, and implementation of African standards in order to enhance Africa's internal trading capacity and competitiveness in products and services, and to uplift the welfare of African consumers; (ii) The African Electrotechnical Standardization Commission (AFSEC), which was established in 2008 by AU to support universal access to electricity generation and transmission in African countries through development and application of Continentally harmonised electrotechnical standards; (iii) Intra African Metrology System (AFRIMETS), which was established in 2006 to promote harmonisation of accurate measurement standards and instruments used in measurement in African countries, which is critical to export, environmental monitoring, and compliance with SPS measures; and (vi) African Accreditation Commission (AFRAC); which was established in 2010 to enhance cooperation between African national accreditation bodies and sub-regional accreditation organisations in the field of accreditation, aimed to provide accreditation support services to African industry and trade, to contribute to the protection of health and safety of the public and the protection of the environment, and to improve Africa's competitiveness at Continental and global level by promoting an internationally acceptable mutual recognition system..

This bottleneck is compounded by the varied capacity of African RECs to coordinate development and adoption of harmonised quality infrastructure policies, measures, and regulatory frameworks. In this regard, while each of the Africa RECs have established their own standards, measurements, conformity, and accreditation systems that are linked with the national systems, there are marked variances in the development and promotion of quality infrastructure between these RECs. This bottleneck implies the need to design a harmonised continental approach for development and/or adoption of international standards and technical regulations to ensure that TBT measures applied by African countries do not constitute unnecessary trade barriers. Such an approach would strengthen existing REC TBT measures and improve continental-wide efforts to cooperate and recognise equivalent standards, technical regulations, conformity assessment procedures, and other TBT related matters necessary to the successful implementation of the AfCFTA.

An additional problem in Kenya which affects fresh produce exports is that KEBS is not mandated by law to check and/or authorise the packaging and labelling used for exports, and the institutions therefore does not appear in the list of regulatory agencies which authorise export entries. This leads to export packages being poorly designed, which affects the marketability of fresh produce as the packages/boxes may collapse during delivery of produce to intended markets. Exporters and importers of fresh produce can only approach KEBS voluntarily to request for assistance with advice on standards that could be used to design high quality packaging and labelling, based on an MOU. The KEBS advisory service is payable, which ends up escalating the cost of exports.

6. **Market access requirements**
Trading in African countries does not attract as many market entry requirements as in the case of EU and Asian lead export markets for Kenya vegetables and fruits. As summarised in Annex 20, Ethiopia and Nigeria which have been used as examples attract only 4 and 16 market entry requirements, compared to the 40 requirements applied in EU and the average of 107 regulations used in UAE. The gap that needs to be addressed therefore is to publicise the content of the regulations applied by each African country, while making efforts to inform exporters about the most cost-effective means and how to apply the ATO to access market-specific information regarding trading conditions for each African market.

2.4.6.4 Resolution of trade barriers in African countries

The AfCFTA has developed the NTBs online reporting, monitoring, and elimination mechanism (www.tradebarriers.africa), which is modelled on the Tripartite NTBs online mechanism. The AfCFTA mechanism was designed in recognition that the elimination of NTBs is critical to boosting intra-Africa trade and achieving the objectives of the AfCFTA. It will thus facilitate to reduce the costs of trading across borders. The mechanism allows traders to report any obstacle encountered, such as excessive delays, ad-hoc fees demanded at the border stations, cumbersome documentation requirements, restrictive product standards, and cumbersome market entry regulations among others. The mechanism is open to all African business sectors: small, medium and large companies, informal traders, and women and youth business operators. However, the effectiveness of the mechanism will only become evident once the AfCFTA becomes fully operational. In the interim, Kenya should use the ITC TQAM to report trade disputes which may be encountered while trading with African countries (outside the EAC and Tripartite trade regimes).

3. ANNEXES

ANNEX 1: Reference Documents

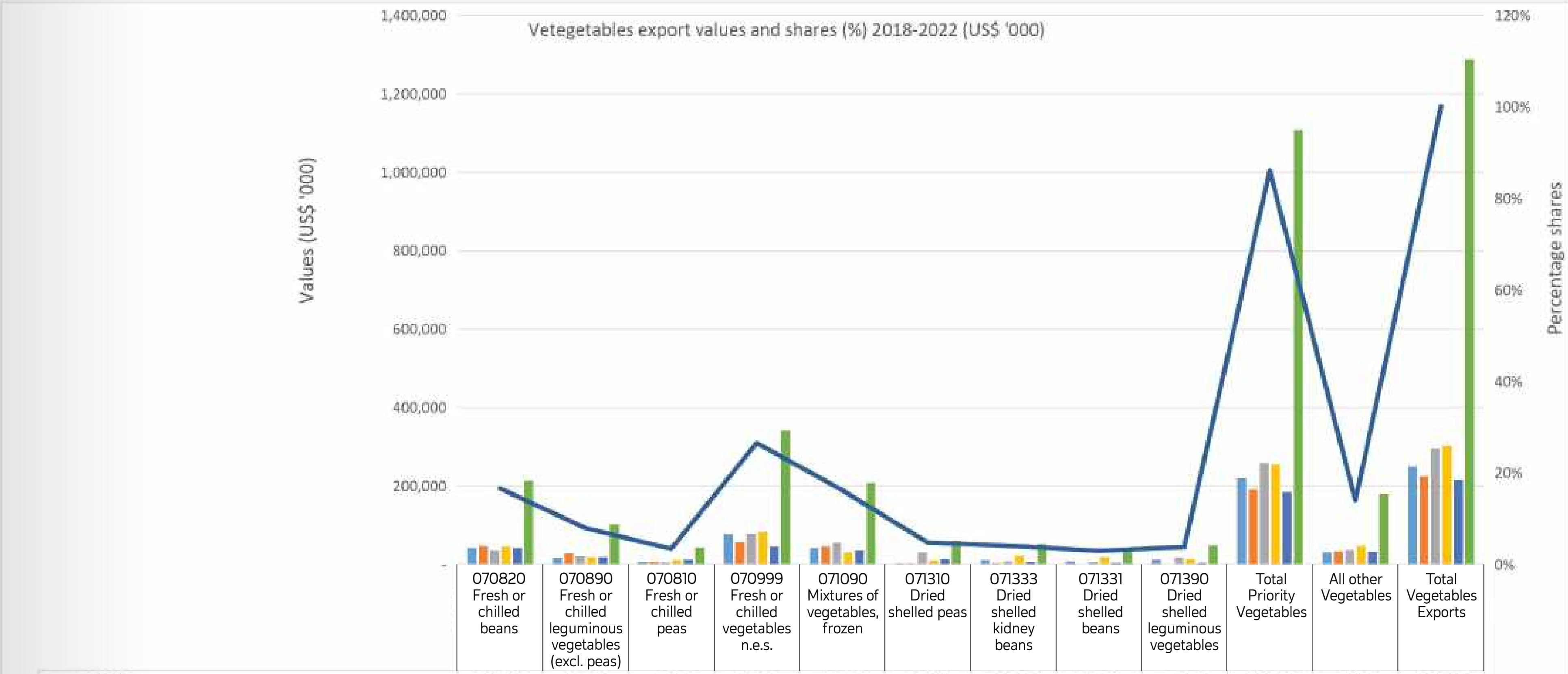
1	Avocado Export Procedures Guide for SMEs in Kenya (prepared with the support of EU-EAC MARKUP Programme[96]); February 2021.
2	Pakistan High Commission in Nairobi; https://www.pakhc.or.ke/Pakistan-Kenya_Relations.html
3	Africa Business Pages; UAE; www.africa-business.com
4	Newsfile; Government of Kenya Accelerates Towards Compliance Market with UAE Blue Carbon; by Lesia Buinoza, info@bluecarbon.ae
5	Fresh Produce Exporters Association of Kenya; Market Access Requirements of Kenyan Fresh Avocado Fruits into India
6	Central Intelligence Agency (CIA); The World Factbook; www.cia.gov/the-world-factbook
7	Circular on Food safety control for imported foodstuff of plant origin in Vietnam; Ministry of Agriculture and Rural Development; www.spsvietnam.gov.vn
8	WTO Agreements: • The Agreement on Agriculture • The Agreement on Rules of Origin • The Agreement on SPS • The Agreement on TBT • The Agreement on Anti-Dumping Measures • The Agreement on Customs Valuation • The Agreement on Import Licensing • The Agreement on Subsidies and Countervailing Measures • The Agreement on Safeguards • The Agreement on Trade Facilitation
9	Agreement establishing the African Continental Free Trade Area; consolidated text signed at Kigali on 21st March 2018
10	AfCFTA Rules Of Origin Manual Vol. 1.0 (July 2022)
11	AfCFTA Agreement e-Tariff Book User Guide (Draft Version V01.4); July 2022
12	AfCFTA Agreement Annex 4 on Trade Facilitation
13	AfCFTA Agreement Annex 5 on Non-Tariff Barriers
14	AfCFTA Agreement Annex 6 on Technical Barriers to Trade
15	AfCFTA Agreement ANNEX 7 on Sanitary and Phytosanitary Measures
16	The African Continental Free Trade Area: Impact Assessment for Kenya; United Nations Economic Commission for Africa; Office for Eastern Africa; 2019
17	Assessment of SPS Legal/ Regulatory Frameworks in the EAC Partner States; The USDA-supported Trade of Agriculture Safely and Efficiently in East Africa (TRASE) project; undated

96. The Avocado Export Procedures Guide for SMEs in Kenya was prepared under the European Union – East African Community Market Access Upgrade Programme (EU-EAC MARKUP), a regional development initiative implemented by the International Trade Centre (ITC) in 2021. The MARKUP Programme aims to contribute to the economic growth of the EAC through supporting increased exports of agribusiness and horticultural products, promoting regional integration, and facilitating access to the European market. The guide builds knowledge and awareness on export market opportunities for Kenya avocados, especially in relation to the EU; and the quality-related requirements (SPS, TBT, standards, rules of origin) in order to access the EU market, and the step-by-step procedures for exporting the avocados.

18	EABC template for reporting Non-Tariff Barriers (NTBs)
19	EAC Common Market Protocol
20	EAC Customs Union Protocol
21	EAC SPS Protocol, July 2013
22	EAC SQMT/SAC Protocol; 2006/2016
23	EAC Customs Management Regulations, 2010; and Revised Edition 2019
24	EAC SQMT Act 2006, Notice of Declaration of East African Standards), May 2023
25	EAC Catalogue of East African Standards, 2023
26	EAC Rules of Origin, 2015
27	EAC Elimination of Non-Tariff Barriers Act, 2017
28	EAC Treaty, 2000; as amended in December 2006 and August 2007
29	Kenya National Trade Policy: Transforming Kenya into a competitive export-led & efficient domestic economy; May 2017
30	Tripartite FTA NTB Portal - reported complaints as at Dec. 2023; https://www.tradebarriers.org/active_complaints
31	EAC Monitoring Mechanism for Elimination of Non-Tariff Barriers; 2006
32	Non-Tariff Barriers to Trade in EAC: A case of exporters in Kenya; Anyal Michael Okute; 2017
33	UNDP: Strengthening Agricultural Value Chains and AfCFTA linkages in South Sudan: Opportunities and Challenges; February 2023
34	Agreement establishing the Tripartite FTA between COMESA, EAC and SADC; signed in Egypt in June 2015
35	TFTA Manual on Rules of Origin, April 2018
36	EU help desk (EU market access regulations) https://trade.ec.europa.eu
37	Combating unjustified SPS Measures in the African Tripartite FTA (SADC-EAC-COMESA): SPS-Plus or SPS-Minus?; Harrison O. Mbori; 2017
38	European Union Economic Partnership Agreement with the East African Community; European Parliament Research Service; Eric Pichon; April 2018
39	EU WTO TBT notification procedure
40	EPA between the EAC Partner States and European Union and Its Member States; 2014
41	EU-EAC EPA: Annex V on Trade and Sustainable Development: EU-Kenya bilateral implementation arrangements of the EU-EAC EPA
42	EU-EAC EPA: Annex I Customs Duties on products originating in the EAC Partner States
43	EU-EAC EPA Development Matrix
44	EU-EAC EPA: Joint Declaration regarding countries which have established a Customs Union with EU
45	Joint Statement on Rules of Origin by the European Union and Kenya
46	EU Anti-Dumping Regulations: Regulation (EU) 2016/1036 of the European Parliament and of the Council; 8 June 2016
47	Kenya Crops (Horticultural Crops) Regulations, 2019
48	UK-Kenya EPA; version ratified by the Kenya National Assembly on 9th March 2021
49	UK-Kenya EPA; full text dated 8th December 2020
50	UK-Kenya EPA Annex I Protocol 1 on Rules of Origin

51	Guide to British Fresh Produce range of products and product associations; Horticultural Development Company, 2013
52	African Union Commission African Continental Free Trade Area (AfCFTA) agreement 2018
53	African Union Commission: Trade in Goods Protocol 2018
54	African Union Commission: Annex 1 Schedules of Tariff Concessions 2018
55	African Union Commission: Annex 2 Rules of Origin 2018
56	African Union Commission: Annex 3 Customs Cooperation and Mutual Administrative Assistance 2018
57	African Union Commission: Annex 4 Trade Facilitation 2018
58	African Union Commission: Annex 5 Non-Tariff Barriers 2018
59	African Union Commission: Annex 6 Technical Barriers to Trade 2018
60	African Union Commission: Annex 7 Sanitary and Phytosanitary Measures 2018
61	African Union Commission: Annex 8 Transit 2018
62	African Union Commission: Annex 9 Trade Remedies 2018
63	What requirements must fresh fruit or vegetables comply with to be allowed on the European market?
64	AgEcon Search, Research in Agricultural and Applied Economics GTAP Annual Conference on Global Economic Analysis
65	(https://www.grocerygazette.co.uk/2023/06/23/tesco-del-monte-allegations
66	(Grocery gazette 8th November 2022)
67	Jai Mei Soon and Richard N. Baines: (2013) Public and Private Food Safety Standards: Facilitating or Frustrating Fresh Produce Growers?
68	Kenya's National Export Development and Promotion Strategy (NEDPS) (2017-2022)
69	Fruit and vegetables: weekly consumption UK 2021 | Statista
70	https://www.bing.com/ck/a?!&&p=bef26dd0cf5999d2JmltdHM9MTcwMzgwODAwMCZpZ3VpZD0zYzNjMzBmNi02MGE xLTYyMWYtMzRlOS0yMzAyNjFlNjYzNTImaW5zaWQ9NTIzMg&ptn=3&ver=2&hsh=3&fclid=3c3c30f6-60a1-621f-34e9-230261e66352&psq=Services+available+to+importers+in+UK&u=a1aHR0cHM6Ly93d3cuZ292LnVrL2ltcG9ydC1nb29kcy1pbnRvLXVr&ntb=
71	Increasing UK–Kenya trade and investment in the horticulture sector - Case study - GOV.UK (www.gov.uk)

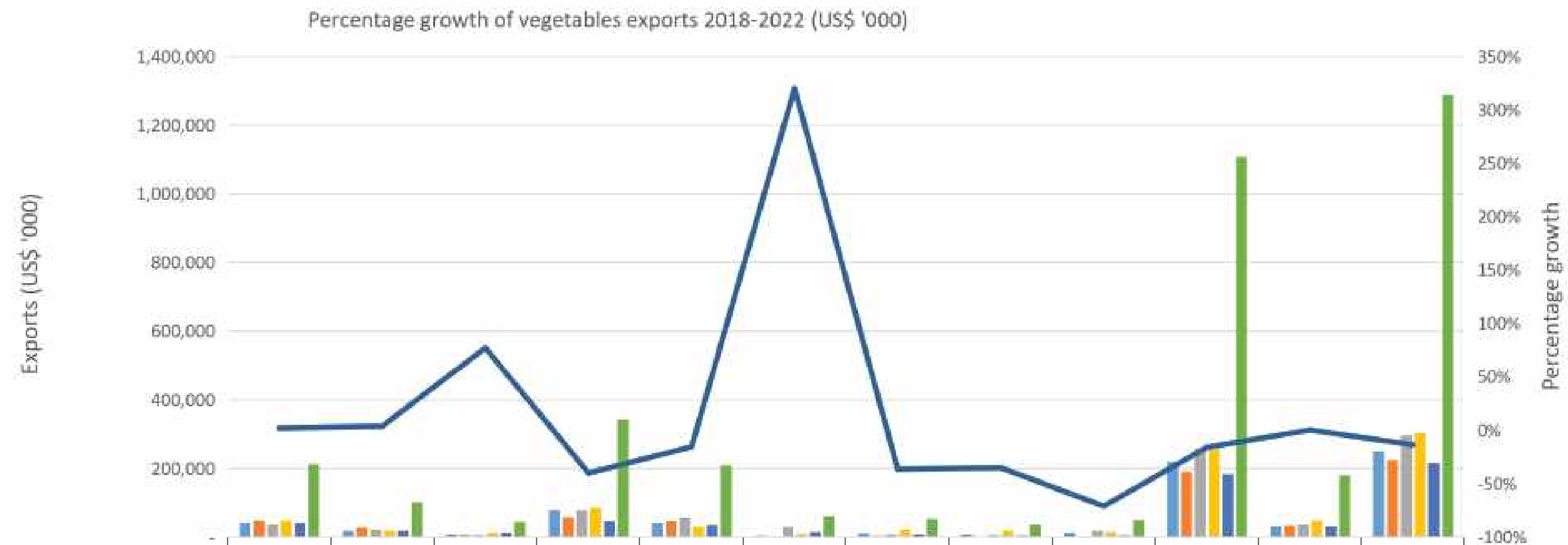
Annex 2: Kenya's export performance in vegetables between 2018 and 2022 (US$ '000)



	070820 Fresh or chilled beans	070890 Fresh or chilled leguminous vegetables (excl. peas)	070810 Fresh or chilled peas	070999 Fresh or chilled vegetables n.e.s.	071090 Mixtures of vegetables, frozen	071310 Dried shelled peas	071333 Dried shelled kidney beans	071331 Dried shelled beans	071390 Dried shelled leguminous vegetables	Total Priority Vegetables	All other Vegetables	Total Vegetables Exports
2018	41,435	17,141	7,086	76,963	42,099	3,411	11,228	7,271	12,585	219,219	30,866	250,085
2019	47,479	27,855	6,304	56,782	45,127	3,273	3,526	358	357	191,061	33,586	224,647
2020	35,809	20,659	5,556	78,069	55,661	30,198	8,406	6,583	17,223	258,164	37,273	295,437
2,021	46,263	18,565	12,221	83,691	30,193	9,953	21,245	18,404	14,621	255,156	47,229	302,385
2,022	42,148	17,746	12,536	45,960	35,497	14,321	7,118	4,709	3,624	183,659	31,791	215,450
Total 2018-2022	213,134	101,966	43,703	341,465	208,577	61,156	51,523	37,325	48,410	1,107,259	180,745	1,288,004
Share (%) of product to vegetables exports 2018-2022	17%	8%	3%	27%	16%	5%	4%	3%	4%	86%	14%	100%

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

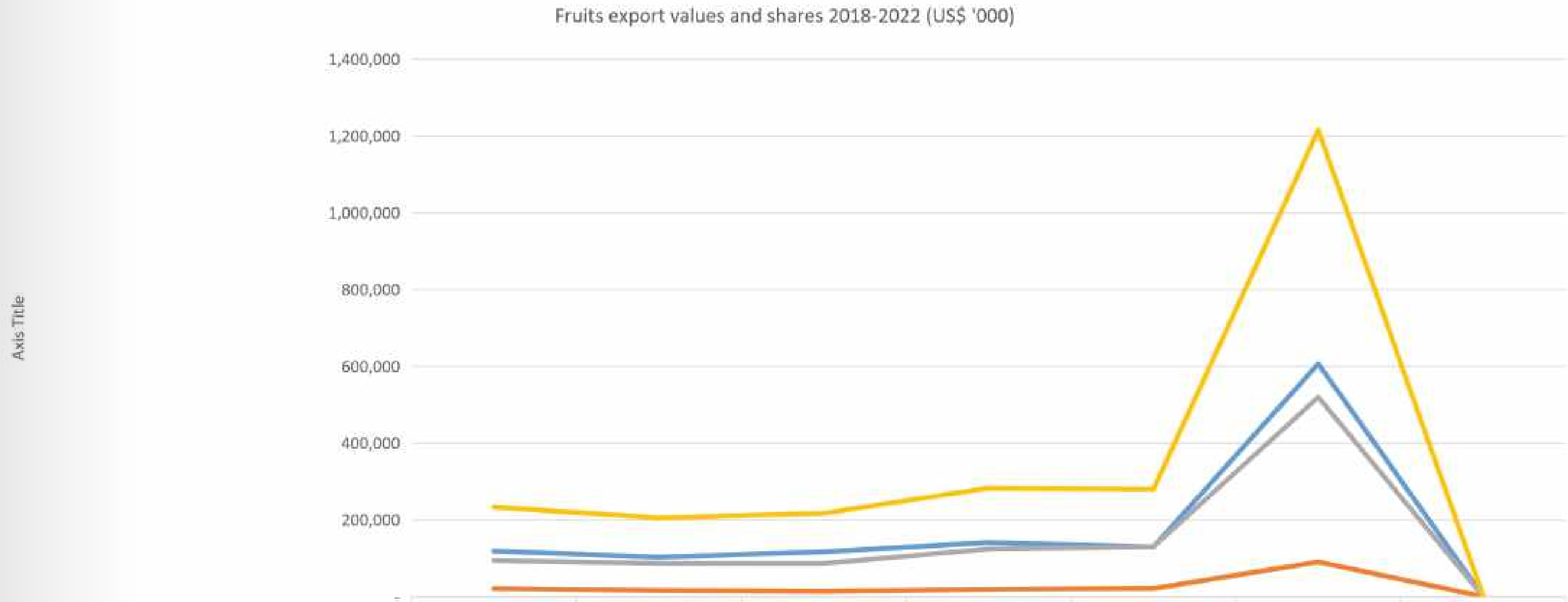
Annex 3: Kenya vegetables exports growth of 2018-2022 (US$ '000)



	070820 Fresh or chilled beans	070890 Fresh or chilled leguminous vegetables (excl. peas)	070810 Fresh or chilled peas	070999 Fresh or chilled vegetables n.e.s.	071090 Mixtures of vegetables, frozen	071310 Dried shelled peas	071333 Dried shelled kidney beans	071331 Dried shelled beans	071390 Dried shelled leguminous vegetables	Total Priority Vegetables	All other Vegetables	Total Vegetables Exports
2018	41,435	17,141	7,086	76,963	42,099	3,411	11,228	7,271	12,585	219,219	30,866	250,085
2019	47,479	27,855	6,304	56,782	45,127	3,273	3,526	358	357	191,061	33,586	224,647
2020	35,809	20,659	5,556	78,069	55,661	30,198	8,406	6,583	17,223	258,164	37,273	295,437
2021	46,263	18,565	12,221	83,691	30,193	9,953	21,245	18,404	14,621	255,156	47,229	302,385
2022	42,148	17,746	12,536	45,960	35,497	14,321	7,118	4,709	3,624	183,659	31,791	215,450
Total 2018-2022	213,134	101,966	43,703	341,465	208,577	61,156	51,523	37,325	48,410	1,107,259	180,745	1,288,004
Growth rate (%) of vegetables exports 2018-2022	2%	4%	77%	-40%	-16%	320%	-37%	-35%	-71%	-16%	0.01%	-14%

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

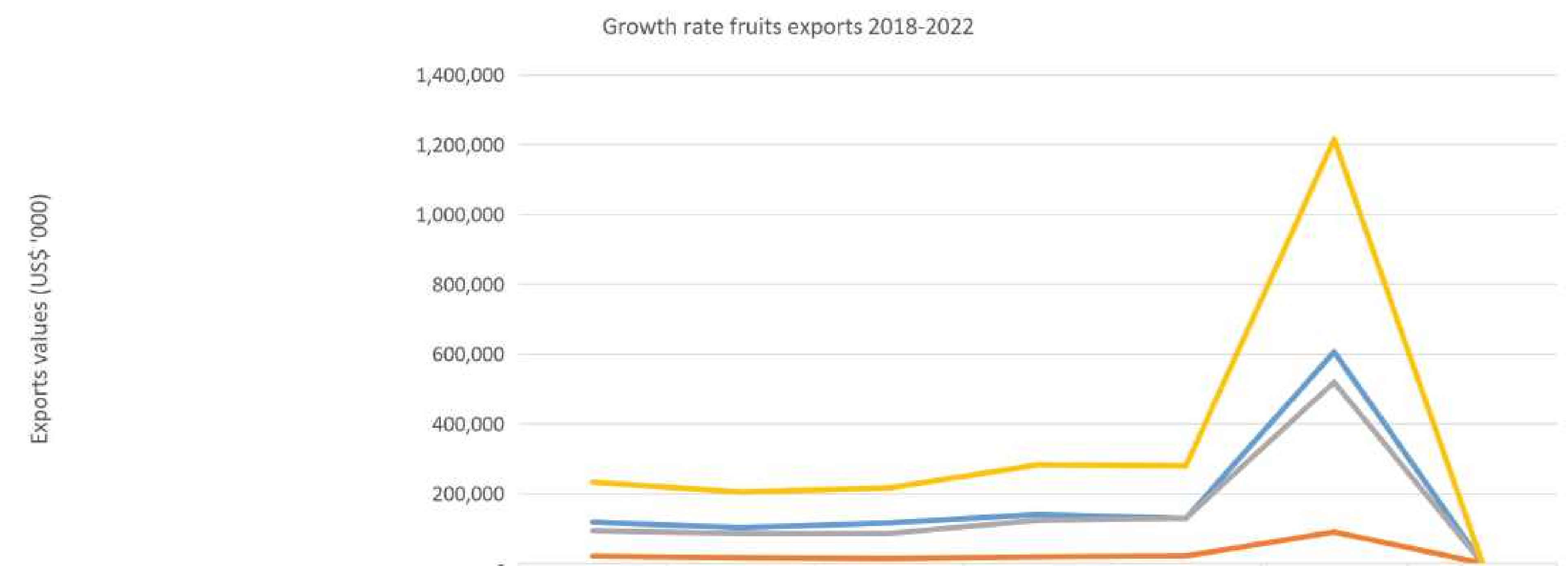
Annex 4: Kenya's export performance in fruits between 2018 and 2022 (US$ '000)



	2018	2019	2020	2,021	2,022	Total 2018-2022	Share (%) of product to fruits exports 2018-2022
080440: Fresh or dried avocados	118,289	102,397	116,255	140,123	128,955	606,019	50%
080450: Fresh or dried guavas & mangoes	20,292	16,185	13,941	18,653	20,865	89,936	7%
All other fruits	93,936	85,846	86,136	123,556	129,462	518,936	43%
Total Fruits Exports	232,517	204,428	216,332	282,332	279,282	1,214,891	100%

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

Annex 5: Kenya's fruits exports growth of 2018-2022 (US$ '000)



	2018	2019	2020	2021	2022	Total 2018-2022	Growth rate (%) of fruits exports 2018-2022
080440: Fresh or dried avocados	118,289	102,397	116,255	140,123	128,955	606,019	9%
080450: Fresh or dried guavas & mangoes	20,292	16,185	13,941	18,653	20,865	89,936	3%
All other fruits	93,936	85,846	86,136	123,556	129,462	518,936	38%
Total Fruits Exports	232,517	204,428	216,332	282,332	279,282	1,214,891	20%

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

Annex 6: Kenyan exports of vegetables and fruits to lead markets (US$ '000)

EXPORT DESTINATION	2018	2019	2020	2021	2022	Total 2018-2022	Product share (%) in group exports 2018-2022	Product export growth to this market 2018-2022
FRESH VEGETABLES								
1. HS 070820 Fresh or chilled beans								
France	12,185	12,442	11,721	14,552	14,095	64,995	30%	16%
United Kingdom	11,600	17,379	11,332	14,673	12,047	67,031	31%	4%
Netherlands	10,327	8,145	7,464	10,336	9,141	45,413	21%	-11%
All other export markets	7,323	9,514	5,290	6,698	6,863	35,688	17%	-6%
Total Exports to the World	41,435	47,480	35,807	46,259	42,146	213,127	100%	2%
2. HS 070890 Fresh or chilled leguminous vegetables								
United Kingdom	9,562	15,446	12,636	7,992	6,666	52,302	51%	-30%
Netherlands	4,502	6,797	4,694	5,533	4,549	26,075	26%	1%
All other export markets	3,082	5,611	3,327	5,040	6,534	23,594	23%	112%
Total Exports to the World	17,146	27,854	20,657	18,565	17,749	101,971	100%	4%
3. HS 070810 Fresh or chilled peas								
United Kingdom	710	594	1,882	3,174	4,028	10,388	24%	467%
Netherlands	2,859	1,915	1,568	4,792	2,983	14,117	32%	4%
France	1,059	1,215	925	1,622	1,909	6,730	15%	80%
All other export markets	2,457	2,582	1,180	2,633	3,613	12,465	29%	47%
Total Exports to the World	7,085	6,306	5,555	12,221	12,533	43,700	100%	77%
4. HS 070999 Fresh or chilled vegetables n.e.s.								
United Kingdom	52,208	42,163	62,673	67,225	35,983	260,252	76%	-31%
All other export markets	24,756	14,618	15,396	16,464	9,977	81,211	24%	-60%
Total Exports to the World	76,964	56,781	78,069	83,689	45,960	341,463	100%	-40%
5. HS 071090 Mixtures of vegetables								
United Kingdom	32,922	32,899	34,010	13,555	19,437	132,823	64%	-41%
Netherlands	5,318	6,964	10,449	7,243	6,523	36,497	17%	23%
All other export markets	3,860	5,260	11,201	9,395	9,535	39,251	19%	147%
Total Exports to the World	42,100	45,123	55,660	30,193	35,495	208,571	100%	-16%

EXPORT DESTINATION	2018	2019	2020	2021	2022	Total 2018-2022	Product share (%) in group exports 2018-2022	Product export growth to this market 2018-2022
FRESH VEGETABLES								
6. HS 071310 Dried shelled peas								
Uganda	162	1,534	15,860	4,729	3,088	25,373	41%	1806%
South Sudan	1,101	1	13,017	1,247	4,801	20,167	33%	336%
All other export markets	2,149	1,737	1,320	3,977	6,430	15,613	26%	199%
Total Exports to the World	3,412	3,272	30,197	9,953	14,319	61,153	100%	320%
7. HS 071333 Dried shelled kidney beans								
India	2,227	572	1,821	13,147	3,950	21,717	27%	77%
Pakistan	8,142	1,062	4,740	3,864	1,243	19,051	23%	-85%
All other export markets	10,369	1,634	6,561	17,011	5,193	40,768	50%	-50%
Total Exports to the World	20,738	3,268	13,122	34,022	10,386	81,536	100%	-50%
8. HS 071331 Dried shelled beans								
India	2,837	121	901	10,724	877	15,460	41%	-69%
United Arab Emirates	3,088	136	2,711	2,136	71	8,142	22%	-98%
Viet Nam	445	-	-	2,407	3,232	6,084	16%	626%
All other export markets	900	101	2,971	3,139	528	7,639	20%	-41%
Total Exports to the World	7,270	358	6,583	18,406	4,708	37,325	100%	-35%
9. HS 071390 Dried, shelled leguminous vegetables (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)								
India	8,164	-	6,469	11,181	-	25,814	53%	-100%
United Arab Emirates	1,786	310	5,689	384	-	8,169	17%	-100%
Viet Nam	1,844	-	359	1,792	2,204	6,199	13%	20%
Pakistan	-	27	4,159	740	-	4,926	10%	0%
All other export markets	789	20	548	524	1,420	3,301	7%	80%
Total Exports to the World	12,583	357	17,224	14,621	3,624	48,409	100%	-71%

EXPORT DESTINATION	2018	2019	2020	2021	2022	Total 2018-2022	Product share (%) in group exports 2018-2022	Product export growth to this market 2018-2022
FRUITS (Avocados and Mangoes)								
1. HS 080440 Fresh or dried avocados								
Netherlands	42,564	26,486	27,682	35,948	36,814	169,494	28%	-14%
United Arab Emirates	16,680	17,296	16,980	17,540	20,128	88,624	15%	21%
France	14,456	13,927	17,057	22,013	18,599	86,052	14%	29%
Spain	10,521	10,730	13,387	15,995	10,825	61,458	10%	3%
Saudi Arabia	7,115	7,753	7,099	8,155	8,700	38,822	6%	22%
All other export markets	26,954	26,208	34,045	40,472	33,888	161,567	27%	26%
Total Exports to the World	118,290	102,400	116,250	140,123	128,954	606,017	100%	9%
2. HS 080450 Fresh or dried guavas, mangoes and mangosteens								
United Arab Emirates	10,265	7,927	4,736	8,643	8,470	40,041	45%	-17%
Saudi Arabia	4,171	3,670	2,077	2,474	2,408	14,800	16%	-42%
Oman	2,061	2,147	1,849	1,766	2,356	10,179	11%	14%
All other export markets	3,794	2,440	5,280	5,767	7,631	24,912	28%	101%
Total Exports to the World	20,291	16,184	13,942	18,650	20,865	89,932	100%	3%

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

Annex 7: Kenyan imports of vegetables and fruits from the lead export markets (US$ '000)

IMPORT SOURCES	2018	2019	2020	2021	2022	Total 2018-2022	Percentage share of total product imports 2018-2022
FRESH VEGETABLES							
1. HS 070820 Fresh or chilled beans							
France	-	-	-	-	-	-	0%
United Kingdom	-	-	-	-	-	-	0%
Netherlands	-	-	-	1	-	1	0.05%
All other import markets	1,422	487	79	10	8	2,006	99.95%
Total Imports from the World	1,422	487	79	11	8	2,007	100%
2. HS 070890 Fresh or chilled leguminous vegetables							
United Kingdom	-	-	-	-	-	-	0%
Netherlands	-	-	-	-	-	-	0%
All other import markets	3	-	-	-	1	4	100.00%
Total Imports from the World	3	-	-	-	1	4	100%
3. HS 070810 Fresh or chilled peas							
United Kingdom	2	5	-	-	-	7	2.2%
Netherlands	-	-	-	-	-	-	0.00%
France	-	1	-	-	-	1	0.3%
All other import markets	-	-	129	134	44	307	97.5%
Total Imports from the World	2	6	129	134	44	315	100%
4. HS 070999 Fresh or chilled vegetables n.e.s.							
United Kingdom	-	-	-	-	-	-	0%
All other import markets	2	-	6	1	6	15	100%
Total Imports from the World	2	-	6	1	6	15	100%
5. HS 071090 Mixtures of vegetables							
United Kingdom	-	3	-	-	-	3	2.5%
Netherlands	-	-	-	-	-	-	0%
All other import markets	20	26	34	22	14	116	97.5%
Total Imports from the World	20	29	34	22	14	119	100%

IMPORT SOURCES	2018	2019	2020	2021	2022	Total 2018-2022	Percentage share of total product imports 2018-2022
FRESH VEGETABLES							
6. HS 071310 Dried shelled peas							
India	-	-	-	2	-	2	0.004%
Pakistan	-	-	-	-	-	-	0%
All other import markets	4,661	15,654	9,518	8,002	9,774	47,609	100%
Total Imports from the World	4,661	15,654	9,518	8,004	9,774	47,611	100%
7. HS 071333 Dried shelled kidney beans							
India	-	-	-	2	-	2	0.004%
Pakistan	-	-	-	-	-	-	0%
All other import markets	4,661	15,654	9,518	8,002	9,774	47,609	100%
Total Imports from the World	4,661	15,654	9,518	8,004	9,774	47,611	100%
8. HS 071331 Dried shelled beans							
India	1	-	8	7	1	17	0.2%
United Arab Emirates	-	-	-	-	-	-	0.0%
Viet Nam	-	-	-	-	-	-	0.0%
All other import markets	4,989	2,438	710	251	300	8,688	99.8%
Total Imports from the World	4,990	2,438	718	258	301	8,705	100%
9. HS 071390 Dried, shelled leguminous vegetables (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)							
India	107	31	16	21	16	191	1.6%
United Arab Emirates	2	-	-	2	2	6	0.05%
Viet Nam	-	-	-	-	-	-	0%
Pakistan	-	-	-	30	-	30	0.3%
All other import markets	5,374	515	3,644	1,079	820	11,432	98%
Total Imports from the World	5,483	546	3,660	1,132	838	11,659	100%

IMPORT SOURCES	2018	2019	2020	2021	2022	Total 2018-2022	Percentage share of total product imports 2018-2022
FRESH VEGETABLES							
10. HS 080440 Fresh or dried avocados							
Netherlands	-	-	-	-	-	-	0%
United Arab Emirates	-	-	-	-	-	-	0%
France	-	-	-	-	-	-	0%
Spain	-	-	-	-	-	-	0%
Saudi Arabia	-	-	-	-	-	-	0%
All other import markets	65	9	342	96	-	512	100%
Total Imports from the World	65	9	342	96	-	512	100%
11. HS 080450 Fresh or dried guavas, mangoes and mangosteens							
United Arab Emirates	-	-	-	1	-	1	0.1%
Saudi Arabia	-	-	-	-	-	-	0%
Oman	-	-	-	-	-	-	0%
All other import markets	775	11	8	161	220	1,175	99.9%
Total Imports from the World	775	11	8	162	220	1,176	100.00%

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

Annex 8: Kenyan trade balance in the lead export markets for vegetables and fruits 2018-2022 (US$ '000)

LEAD EXPORT MARKETS	TOTAL EXPORTS 2018-2022 (US$ '000)	Total Imports 2018-2022 (US$ '000)	Trade Balance (US$ '000)
FRESH VEGETABLES			
1. HS 070820 Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled			
France	64,995	-	64,995
United Kingdom	67,031	-	67,031
Netherlands	45,413	1	45,412
All other markets	35,688	2,006	33,682
Total World	213,127	2,007	211,120
2. HS 070890 Fresh or chilled leguminous vegetables, shelled or unshelled (excl. peas and beans)			
United Kingdom	52,302	-	52,302
Netherlands	26,075	-	26,075
All other markets	23,594	4	23,590
Total World	101,971	4	101,967
3. HS 070810 Fresh or chilled peas "Pisum sativum", shelled or unshelled			
United Kingdom	10,388	7	10,381
Netherlands	14,117	-	14,117
France	6,730	1	6,729
All other markets	12,465	307	12,158
Total World	43,700	315	43,385
4. HS 070999 Fresh or chilled vegetables n.e.s.			
United Kingdom	260,252	-	260,252
All other markets	81,211	15	81,196
Total World	341,463	15	341,448
5. HS 071090 Mixtures of vegetables, uncooked or cooked by steaming or by boiling in water, frozen			
United Kingdom	132,823	3	132,820
Netherlands	36,497	-	36,497
All other markets	39,251	116	39,135
Total World	208,571	119	208,452

LEAD EXPORT MARKETS	TOTAL EXPORTS 2018-2022 (US$ '000)	Total Imports 2018-2022 (US$ '000)	Trade Balance (US$ '000)
FRESH VEGETABLES			
6. HS 071310 Dried, shelled peas "Pisum sativum", whether or not skinned or split			
Uganda	25,373	421	24,952
South Sudan	20,167	-	20,167
All other markets	15,613	133,724	(118,111)
Total World	61,153	134,145	(72,992)
7. HS 071333 Dried, shelled kidney beans "Phaseolus vulgaris", whether or not skinned or split			
India	21,717	2	21,715
Pakistan	19,051	-	19,051
All other markets	40,768	47,609	(6,841)
Total World	81,536	47,611	33,925
8. HS 071331 Dried, shelled beans of species "Vigna mungo [L.] Hepper or Vigna radiata [L.] Wilczek", whether or not skinned or split			
India	15,460	17	15,443
United Arab Emirates	8,142	-	8,142
Viet Nam	6,084	-	6,084
All other markets	7,639	8,688	(1,049)
Total World	37,325	8,705	28,620
9. HS 071390 Dried, shelled leguminous vegetables, whether or not skinned or split (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)			
India	25,814	191	25,623
UAE	8,169	6	8,163
Viet Nam	6,199	-	6,199
Pakistan	4,926	30	4,896
All other markets	3,301	11,432	(8,131)
Total World	48,409	11,659	36,750
Total Lead Vegetables	**1,137,255**	**204,580**	**932,675**

LEAD EXPORT MARKETS	TOTAL EXPORTS 2018-2022 (US$ '000)	Total Imports 2018-2022 (US$ '000)	Trade Balance (US$ '000)
FRUITS (Avocados and Mangoes)			
1. HS 080440 Fresh or dried avocados			
Netherlands	169,494	-	169,494
UAE	88,624	-	88,624
France	86,052	-	86,052
Spain	61,458	-	61,458
Saudi Arabia	38,822	-	38,822
All other markets	161,567	512	161,055
Total World	606,017	512	605,505
2. HS 080450 Fresh or dried guavas, mangoes and mangosteens			
United Arab Emirates	40,041	1	40,040
Saudi Arabia	14,800	-	14,800
Oman	10,179	-	10,179
All other markets	24,912	1,175	23,737
Total World	89,932	1,176	88,756
Total Avocadoes and Mangoes	**695,949**	**1,688**	**694,261**

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

Annex 9: Kenya's market share and unrealised market potential for vegetables in the lead export markets

KENYA AND 10 COMPETING COUNTRIES FOR THIS MARKET	2018	2019	2020	2021	2022	Total 2018-2022 (US$ '000)	Market share (%) combined 2018-2022	Kenya unrealised market potential based 2018-2022 (US$ '000) exports
1. French Market								
Spain	1,169,131	1,206,759	1,314,909	1,434,916	1,365,332	6,491,047	35%	
Morocco	644,495	603,523	623,907	729,489	871,833	3,473,247	19%	
Belgium	434,986	447,363	438,860	415,269	416,252	2,152,730	12%	
Netherlands	285,392	288,010	270,005	287,832	272,620	1,403,859	8%	
Italy	170,927	170,309	188,674	199,786	174,066	903,762	5%	
Poland	103,044	110,972	106,518	114,158	132,401	567,093	3%	
China	79,648	69,024	67,315	81,086	95,732	392,805	2%	
Germany	88,882	76,643	59,346	59,901	65,164	349,936	2%	
France	48,953	48,045	49,077	41,457	38,596	226,128	1%	
Portugal	42,743	46,997	44,209	49,046	42,424	225,419	1%	
Kenya	31,664	31,464	37,123	38,983	38,062	177,296	1%	18,343,025
All other import source countries	406,220	400,019	409,165	450,969	490,626	2,156,999	12%	
World	3,506,085	3,499,128	3,609,108	3,902,892	4,003,108	18,520,321	100%	
2. United Kingdom Market								
Spain	1,099,525	1,092,625	1,159,966	1,149,420	1,409,192	5,910,728	27%	
Netherlands	978,555	927,093	898,046	824,894	763,952	4,392,540	20%	
Belgium	264,283	273,225	260,136	215,689	221,235	1,234,568	6%	
Poland	184,326	176,310	150,716	185,514	240,975	937,841	4%	
Ireland	201,961	194,281	177,290	212,873	136,548	922,953	4%	
Morocco	100,270	117,281	150,348	227,535	281,484	876,918	4%	
France	188,739	172,441	166,092	116,466	77,572	721,310	3%	
Italy	141,048	122,670	134,160	139,459	109,600	646,937	3%	
Germany	178,767	191,052	200,161	44,185	32,681	646,846	3%	

KENYA AND 10 COMPETING COUNTRIES FOR THIS MARKET	2018	2019	2020	2021	2022	Total 2018-2022 (US$ '000)	Market share (%) combined 2018-2022	Kenya unrealised market potential based 2018-2022 (US$ '000) exports
2. United Kingdom Market								
Kenya	120,096	99,490	101,218	155,473	136,480	612,757	3%	21,082,467
China	80,835	106,363	88,894	103,424	122,134	501,650	2%	
All other import source countries	818,111	847,508	843,959	937,170 v	843,428	4,290,176	20%	
World	4,356,516	4,320,339	4,330,986	4,312,102	4,375,281	21,695,224	100%	
3. Netherlands Market								
Spain	715,216	713,515	739,452	781,769	726,871	3,676,823	25%	
Belgium	498,147	522,110	519,841	574,995	498,283	2,613,376	17%	
Germany	434,145	419,191	416,402	502,363	503,422	2,275,523	15%	
France	195,647	202,301	197,221	203,294	218,112	1,016,575	7%	
Italy	88,254	97,271	107,406	125,793	118,979	537,703	4%	
Morocco	89,369	99,599	107,462	124,217	101,364	522,011	3%	
USA	83,060	96,788	102,712	107,685	91,397	481,642	3%	
Poland	78,034	75,505	68,070	91,172	86,372	399,153	3%	
China	63,737	70,234	70,857	85,762	98,858	389,448	3%	
Egypt	45,980	100,429	62,254	86,927	77,487	373,077	2%	
Kenya	39,908	33,725	32,246	45,370	32,017	183,266	1%	14,754,473
All other import source countries	449,760	469,052	477,529	548,106	524,689	2,469,136	17%	
World	2,781,262	2,899,721	2,901,451	3,277,447	3,077,858	14,937,739	100%	

KENYA AND 10 COMPETING COUNTRIES FOR THIS MARKET	2018	2019	2020	2021	2022	Total 2018-2022 (US$ '000)	Market share (%) combined 2018-2022	Kenya unrealised market potential based 2018-2022 (US$ '000) exports
4. Uganda Market								
Kenya	4,682	5,684	18,182	30,666	5,078	64,292	47%	72,161
Tanzania	4,268	9,336	12,763	11,315	18,154	55,836	41%	
China	1,775	1,593	1,654	1,601	2,032	8,655	6%	
UAE	560	69	795	260	223	1,907	1%	
Canada	13	129	122	900	594	1,758	1%	
Turkey	160	202	151	226	22	761	1%	
Rwanda	135	189	4	1	381	710	0.5%	
India	57	56	144	112	243	612	0.4%	
Netherlands	157	166	144	128		595	0.4%	
Brazil	481	0	0			481	0.4%	
South Africa	46	81	77	56	6	266	0.2%	
All other import source countries	127	277	63	39	68	574	0.4%	
World	12,463	17,783	34,100	45,306	26,801	136,453	100%	
5. South Sudan Market								
Uganda	22,885	15,953	12,578	12,785	17,395	81,596	59%	
Kenya	2,599	2,465	14,680	2,055	6,575	28,374	21%	109,799
UAE	245	2,430	1,818	5,624	11,101	21,218	15%	
China	87	295	435	794	947	2,558	2%	
Rwanda	0	450	73	1	716	1,240	1%	
Tanzania,	0	0	0	200	938	1,138	0.8%	
Belgium	60	164	175	201	304	904	0.7%	
Egypt	0	0	14	120	199	333	0.2%	
Pakistan	268	0	0	0	0	268	0.2%	
Netherlands	10	8	169	0	0	187	0.1%	

KENYA AND 10 COMPETING COUNTRIES FOR THIS MARKET	2018	2019	2020	2021	2022	Total 2018-2022 (US$ '000)	Market share (%) combined 2018-2022	Kenya unrealised market potential based 2018-2022 (US$ '000) exports
5. South Sudan Market								
Canada	103	0	39	31	0	173	0.1%	
All other import source countries	30	98	41	-	15	184	0.1%	
World	26,287	21,863	30,022	21,811	38,190	138,173	100%	
6. India Market								
Myanmar	303,320	344,724	388,543	616,295	685,868	2,338,750	28%	
Canada	115,261	439,309	505,598	411,886	329,784	1,801,838	21%	
Mozambique	106,442	115,201	158,271	210,200	331,976	922,090	11%	
Tanzania	32,194	132,070	156,034	283,227	130,746	734,271	9%	
Australia	93,435	41,066	72,941	120,663	202,680	530,785	6%	
Brazil	39,156	58,813	39,549	92,582	81,618	311,718	4%	
Sudan	47,340	29,817	24,685	91,469	30,357	223,668	3%	
China	56,831	56,211	48,765	35,457	10,081	207,345	2%	
Russia	65,169	55,145	39,905	5,061	434	165,714	2%	
Malawi	10,872	33,168	1,680	35,091	44,458	125,269	1%	
Kenya	19,278	1,310	4,440	44,973	6,579	76,580	1%	8,369,948
All other import source countries	198,194	299,106	209,203	181,287	120,710	1,008,500	11.94%	
World	1,087,492	1,605,940	1,649,614	2,128,191	1,975,291	8,446,528	100%	

KENYA AND 10 COMPETING COUNTRIES FOR THIS MARKET	2018	2019	2020	2021	2022	Total 2018-2022 (US$ '000)	Market share (%) combined 2018-2022	Kenya unrealised market potential based 2018-2022 (US$ '000) exports
7. Pakistan Market								
Australia	121,051	49,617	87,603	252,970	226,663	737,904	18%	
Afghanistan	110,641	155,410	162,147	118,973	140,094	687,265	16%	
Russia	67,811	101,932	138,559	129,742	127,491	565,535	13%	
Canada	56,817	66,650	85,247	104,498	171,264	484,476	12%	
China	43,988	58,340	112,518	71,260	75,111	361,217	9%	
USA	17,895	30,257	45,679	38,245	14,261	146,337	3%	
Iran	29,502	15,061	33,489	22,836	43,099	143,987	3%	
Tanzania	25,989	4,363	23,065	5,649	52,865	111,931	3%	
Montenegro	-	-	34,095	72,059	5,026	111,180	3%	
Viet Nam	44,920	39,376	22,910	-	623	107,829	3%	
Kenya	13,881	4,005	17,329	8,666	2,020	45,901	1%	4,150,348
All other import source countries	121,564	87,972	133,804	121,695	227,652	692,687	17%	
World	654,059	612,983	896,445	946,593	1,086,169	4,196,249	100%	
8. United Arab Emirates Market								
Canada	105,793	105,792	137,480	161,985	313,929	824,979	15%	
India	154,834	136,667	142,195	127,021	211,292	772,009	14%	
Australia	79,337	73,117	68,542	112,519	166,066	499,581	9%	
China	68,599	89,781	88,686	103,142	108,278	458,486	8%	
Iran	61,224	53,323	53,236	47,903	55,808	271,494	5%	
Egypt	45,419	51,398	50,170	40,452	60,622	248,061	5%	
Spain	41,904	40,887	46,681	42,524	37,834	209,830	4%	
Pakistan	33,722	28,470	33,855	38,635	38,829	173,511	3%	
Netherlands	41,391	36,333	32,621	29,943	26,726	167,014	3%	
Jordan	42,267	37,070	23,869	26,820	24,669	154,695	3%	

KENYA AND 10 COMPETING COUNTRIES FOR THIS MARKET	2018	2019	2020	2021	2022	Total 2018-2022 (US$ '000)	Market share (%) combined 2018-2022	Kenya unrealised market potential based 2018-2022 (US$ '000) exports
8. United Arab Emirates Market								
Kenya	9,280	6,925	17,132	7,633	7,032	48,002	1%	5,369,792
All other import source countries	289,555	285,766	322,314	361,806	330,691	1,590,132	29%	
World	973,325	945,529	1,016,781	1,100,383	1,381,776	5,417,794	100%	
9. Vietnam Market								
Cambodia	222,304	175,587	147,729	502,599	1,136,477	2,184,696	45%	
China	352,212	372,901	242,163	287,591	456,859	1,711,726	36%	
Myanmar	31,293	59,737	73,391	105,098	109,177	378,696	8%	
Lao	22,247	21,790	20,842	58,556	74,420	197,855	4%	
Australia	15,096	9,628	14,070	34,331	16,794	89,919	2%	
India	12,692	13,755	9,289	9,674	32,552	77,962	2%	
United Arab Emirates	17,401	16,192	6,324	3,889	3,150	46,956	1%	
Thailand	4,574	3,686	5,161	7,147	2,896	23,464	0.5%	
Korea	2,533	4,935	3,394	3,738	4,424	19,024	0.4%	
Argentina	426	428	2,120	4,890	5,618	13,482	0.3%	
Kenya	38	-	62	688	184	972	0.02%	4,803,819
All other import source countries	9,819	11,190	12,122	12,971	13,934	60,036	1.2%	
World	690,633	689,829	536,666	1,031,175	1,856,488	4,804,791	100%	

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

Annex 10: Kenya's market share and unrealised market potential for avocados in the lead export markets

KENYA AND 10 COMPETING COUNTRIES FOR THIS MARKET	2018	2019	2020	2021	2022	Total 2018-2022 (US$ '000)	Market share (%) combined 2018-2022	Kenya unrealised market potential based 2018-2022 (US$ '000) exports
1. Netherlands Market								
Peru	168,939	204,147	316,198	373,821	324,726	1,387,831	32%	
Chile	81,689	152,259	131,264	83,395	101,687	550,294	13%	
Colombia	30,126	75,978	141,313	150,980	93,300	491,697	11%	
South Africa	54,590	65,383	88,509	79,269	79,609	367,360	9%	
Spain	35,455	42,037	72,438	72,209	63,391	285,530	7%	
Mexico	46,415	97,731	66,507	50,772	17,220	278,645	6%	
Kenya	32,347	40,686	55,569	64,849	76,273	269,724	6%	4,049,377
Israel	26,198	35,414	26,003	31,472	41,232	160,319	4%	
Germany	7,985	15,250	21,701	20,062	18,296	83,294	2%	
Belgium	14,113	22,455	26,321	11,576	6,429	80,894	2%	
Morocco	6,238	4,020	15,523	14,839	25,191	65,811	2%	
All other import source countries	36,125	62,233	66,573	67,730	65,041	297,702	7%	
World	540,220	817,593	1,027,919	1,020,974	912,395	4,319,101	100%	
2. United Arab Emirates Market								
Kenya	17,064	17,837	16,907	18,262	19,724	89,794	37%	152,842
Mexico	8,529	12,508	13,894	18,045	13,819	66,795	28%	
Peru	3,360	2,971	3,592	3,346	2,587	15,856	7%	
USA	3,307	2,198	2,065	1,903	1,847	11,320	5%	
Rwanda	185	605	1,153	2,974	4,791	9,708	4%	
Chile	2,203	2,899	1,640	971	1,681	9,394	4%	
South Africa	1,454	2,175	644	1,529	2,510	8,312	3%	
Tanzania	34	515	1,150	1,783	4,312	7,794	3%	
Colombia	818	781	1,289	1,559	2,295	6,742	3%	

KENYA AND 10 COMPETING COUNTRIES FOR THIS MARKET	2018	2019	2020	2021	2022	Total 2018-2022 (US$ '000)	Market share (%) combined 2018-2022	Kenya unrealised market potential based 2018-2022 (US$ '000) exports
2. United Arab Emirates Market								
Uganda	1,012	978	726	341	1,437	4,494	2%	
Spain	553	329	847	651	1,138	3,518	1%	
All other import source countries	1,278	1,426	2,325	1,697	2,183	8,909	4%	
World	39,797	45,222	46,232	53,061	58,324	242,636	100%	
3. French Market								
Spain	130,361	144,233	146,553	151,150	134,008	706,305	28%	
Peru	87,296	103,072	111,116	137,673	139,262	578,419	23%	
Israel	34,670	66,212	54,195	53,992	68,239	277,308	11%	
Mexico	37,518	57,964	43,485	47,460	15,189	201,616	8%	
Morocco	10,383	17,887	30,164	30,953	62,096	151,483	6%	
Kenya	24,757	24,014	27,297	35,742	36,228	148,038	6%	2,373,755
Chile	24,843	32,101	35,527	19,171	20,874	132,516	5%	
South Africa	26,075	23,563	19,097	17,236	15,400	101,371	4%	
Colombia	8,474	17,038	21,039	21,444	11,734	79,729	3%	
Dominican Republic	4,839	9,897	10,928	9,389	9,770	44,823	2%	
Tanzania	5,987	5,581	8,197	3,856	3,872	27,493	1%	
All other import source countries	13,507	19,781	11,245	12,175	15,984	72,692	3%	
World	408,710	521,343	518,843	540,241	532,656	2,521,793	100%	

KENYA AND 10 COMPETING COUNTRIES FOR THIS MARKET	2018	2019	2020	2021	2022	Total 2018-2022 (US$ '000)	Market share (%) combined 2018-2022	Kenya unrealised market potential based 2018-2022 (US$ '000) exports
4. Spanish Market								
Peru	135,499	132,098	165,333	210,646	244,590	888,166	47%	
Mexico	33,926	74,677	66,570	79,918	24,188	279,279	15%	
Morocco	32,659	20,704	50,266	58,630	45,942	208,201	11%	
Chile	15,745	35,088	16,898	21,817	23,068	112,616	6%	
Colombia	14,438	16,656	24,280	26,649	15,386	97,409	5%	
Netherlands	8,360	12,797	17,948	27,020	10,585	76,710	4%	
Kenya	10,392	12,431	17,664	20,037	15,480	76,004	4%	1,833,401
Portugal	3,827	9,069	8,104	15,830	15,506	52,336	3%	
Brazil	8,738	9,925	4,491	4,955	3,363	31,472	2%	
South Africa	7,218	2,719	3,740	5,707	3,246	22,630	1%	
France	2,757	3,991	4,635	3,936	1,624	16,943	1%	
All other import source countries	7,581	11,130	9,374	12,118	7,436	47,639	2%	
World	281,140	341,285	389,303	487,263	410,414	1,909,405	100%	

KENYA AND 10 COMPETING COUNTRIES FOR THIS MARKET	2018	2019	2020	2021	2022	Total 2018-2022 (US$ '000)	Market share (%) combined 2018-2022	Kenya unrealised market potential based 2018-2022 (US$ '000) exports
5. Saudi Arabia Market								
Kenya	11,168	12,580	10,845	11,743	14,893	61,229	47%	69,826
Mexico	1,853	2,815	2,883	4,670	3,203	15,424	12%	
Spain	4,920	4,574	1,145	10	123	10,772	8%	
South Africa	3,324	3,337	2,035	404	687	9,787	7%	
USA	3,193	1,718	1,125	711	459	7,206	5%	
Netherlands	525	901	1,141	891	1,779	5,237	4%	
Uganda	595	761	804	575	738	3,473	3%	
Chile	1,666	1,206	201	12	231	3,316	3%	
Colombia	157	1,374	278	218	1,086	3,113	2%	
Peru	123	167	133	872	870	2,165	2%	
Lebanon	309	336	608	386	-	1,639	1%	
All other import source countries	1,934	1,501	1,432	1,084	1,743	7,694	6%	
World	29,767	31,270	22,630	21,576	25,812	131,055	100%	

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

Annex 11: Kenya's market share and unrealised market potential for Mangoes in the lead export markets

KENYA AND 10 COMPETING COUNTRIES FOR THIS MARKET	2018	2019	2020	2021	2022	Total 2018-2022 (US$ '000)	Market share (%) combined 2018-2022	Kenya unrealised market potential (US$ '000) average 2018-2022
1. United Arab Emirates Market								
Pakistan	21,522	20,440	21,177	28,065	23,680	114,884	26%	
India	26,434	25,158	20,509	24,803	23,439	120,343	27%	
Kenya	9,449	8,096	4,680	7,862	8,181	38,268	9%	411,274
Egypt	4,739	5,077	7,496	5,299	8,038	30,649	7%	
Yemen	1,043	995	1,931	3,311	4,743	12,023	3%	
Thailand	5,497	6,125	4,857	4,056	4,266	24,801	6%	
Viet Nam	3,920	4,226	6,759	7,064	4,105	26,074	6%	
South Africa	1,890	2,473	3,177	3,046	4,102	14,688	3%	
Indonesia	3,678	2,864	1,940	2,721	3,358	14,561	3%	
Peru	574	1,008	945	1,646	2,224	6,397	1%	
Australia	4,095	3,495	3,468	2,733	2,183	15,974	4%	
All other import source countries	4,422	6,551	6,542	7,037	6,328	30,880	7%	
World	87,263	86,508	83,481	97,643	94,647	449,542	100%	
2. Saudi Arabia Market								
Egypt	8,538	10,417	27,794	21,703	33,982	102,434	35%	
Yemen	9,049	7,722	13,221	26,045	17,045	73,082	25%	
Pakistan	7,708	11,855	9,456	11,601	9,052	49,672	17%	
India	5,450	6,369	2,885	3,152	3,166	21,022	7%	
Kenya	5,848	4,534	2,504	3,331	3,542	19,759	7%	272,100
South Africa	1,182	2,278	1,788	988	711	6,947	2%	
Thailand	1,076	1,019	589	493	682	3,859	1%	
Australia	1,070	1,216	590	338	90	3,304	1%	

KENYA AND 10 COMPETING COUNTRIES FOR THIS MARKET	2018	2019	2020	2021	2022	Total 2018-2022 (US$ '000)	Market share (%) combined 2018-2022	Kenya unrealised market potential (US$ '000) average 2018-2022
2. Saudi Arabia Market								
Bangladesh	168	256	145	592	818	1,979	0.7%	
Sri Lanka	423	691	305	165	248	1,832	0.6%	
Peru	18	71	726	734	227	1,776	0.6%	
All other import source countries	1,575	1,392	1,192	1,225	809	6,193	2%	
World	42,105	47,820	61,195	70,367	70,372	291,859	100%	
3. Oman Market								
Yemen	4,626	6,377	4,906	8,978	18,490	43,377	26%	
Pakistan	3,670	11,579	8,799	9,237	7,821	41,106	25%	
United Arab Emirates	2,866	1,299	3,723	3,370	13,483	24,741	15%	
Egypt	3,941	5,449	2,878	3,573	4,666	20,507	12%	
India	2,777	4,539	5,282	2,755	4,163	19,516	12%	
Kenya	622	1,783	1,168	1,809	2,097	7,479	5%	158,458
Qatar	-	438	552	561	356	1,907	1%	
Thailand	68	380	582	164	611	1,805	1%	
Indonesia	25	415	481	126	1	1,048	0.6%	
Sri Lanka	22	163	250	53	178	666	0.4%	
Viet Nam	175	215	183	74	15	662	0.4%	
All other import source countries	375	777	834	675	467	3,128	2%	
World	19,167	33,414	29,637	31,371	52,348	165,937	100%	

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

Annex 12: European Union regulatory requirements applied on imported fresh vegetables and fruits

1. A120: Geographical restrictions on eligibility

This regulation prohibits importation of specified animal products from specific countries or regions if there is lack of evidence to guarantee avoidance of SPS hazards. Such restrictions can automatically be imposed until the country concerned proves it has established satisfactory SPS measures that are considered acceptable to provide a certain level of protection against health hazards. Eligible countries and authorized production establishments are put on a positive list if they observe EU Council Directive 96/23/EC, introduced in October 2010. The regulation species measures for the control of pesticide residues on plant and animal products intended for human consumption; and outlines the procedure to use when evaluating whether sufficient guarantee is provided by a non-EU country to ensure residues of chemical substances on such products can be deemed to be equivalent to those applied on EU originating products. Plant materials and animal products should only be imported from authorised countries included in the list published in EC[97] Decision 2011/163/EU. Inclusion and retention of a non-EU country on this list is subject to submission of a plan that sets out a guarantee to regularly monitor and assure that chemical residues are absent from plants and animal products exported to EU.

2. A130 - Systems approach

This regulation requires that two or more independent SPS measures applicable for the same product can be combined, which can comprise any number of interrelated measures and conformity-assessment requirements applied during all stages of production for a given product. The regulation appears as EC No. 852/2004 of the European Parliament and the Council, introduced in October 2009 to provide the relevant hygiene rules on foodstuffs of non-animal origin which are imported into EU from non-EU countries. It provides that business operators/exporters from non-EU countries should monitor the food safety of products and processes under their responsibility; including hygiene provisions for primary production and requirements for all stages of production, processing and distribution of foods, the microbiological criteria for producing products, and the procedures to proof compliance with Hazard Analysis and Critical Control Point (HACCP) principles. It also provides that business operators/exporters are responsible for the process of approval and registration of their export establishments.

3. A140 - Authorization requirement for SPS reasons for importing certain products.

This regulation requires that the authorization, permit, approval or licence related to a consignment must be received from a relevant EU SPS government agency before the importation can take place. It contains two distinct components, namely:

3.1 Control of pesticide residues in plant and animal products intended for human consumption: Introduced in October 2010, this sub-regulation relates to control of pesticide residues in plant and animal products intended for human consumption; as contained in the "plants, plant products and their protection Regulation (EC) No 1107/2009 of the European Parliament and of the Council (OJ L-309 24/11/2009) (CELEX 32009R1107). The regulation lays down rules and procedures for active substances to be marketed in the EU and for the authorisation by EU Member States of plant protection products that may contain such active substances. Active substances in this regard cannot be used in plant protection products unless they are included in a positive EU list as detailed in the EU Pesticide Database. Once a substance is included in the list, Member EU States may authorise the use of products which contain it.

3.2 European Union Overview of Import Procedures: This is an additional regulation to 3.1 above which stipulates that imports of certain agricultural products into the EU may be subject to the presentation of an import certificate, issued by the competent authorities of the EU Member States prior to clearance for free circulation, and upon request from the importer and security deposit returnable on giving proof of the import.

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4. A150 - Authorization requirement for importers for SPS reasons

This regulation provides that EU importers must be authorized and registered holders of an import permit, licence or any other kind of approval which authorises them to engage in the business of importing certain products. To obtain such approval, importers may need to comply with certain requirements, documentation and registration fees. This includes cases where the registration or authorization of establishments producing certain products is required. The authorization is not tied to each consignment, but is applied to importers who lawfully engage in importation of certain products. The regulation contains two distinct components, namely:

41. European Union Overview of Import Procedures: This regulation was introduced in March 2020 and requires that imports of plants and plant products must comply with certain phytosanitary measures that basically require that goods must: (i) be accompanied by a phytosanitary certificate issued by the designated authorities of the exporting country; (ii) undergo customs inspections at the designated Border Inspection Post at the port of entry into the EU; (iii) be imported into the EU by a registered importer with a Member State's official Register; and (iv) be notified to the customs office before arrival to the port of entry.

4.2 Health control of foodstuffs of non-animal origin: This is regulation introduced was introduced in October 2009 and provides special provisions on importation of Genetically Modified (GM) foods and novel foods. On the basis of the opinion of the European Food Safety Authority (EFSA), the EC drafts a proposal for granting or refusing the authorization on importation, which must be approved by the Standing Committee on the Food Chain and Animal Health. The authorised food and feed are entered in the Community Register of GM foods and feeds. The relevant hygiene rules of foodstuffs of non-animal origin which food business operators in non-EU must conform with are contained in Regulation (EC) No. 852/2004 of the European Parliament and of the Council; which provides the procedures for approval and registration of establishments dealing in such products. Additionally, imports of foodstuffs of non-animal origin into the EU must comply with general conditions and specific provisions designed to prevent risk to public health and to protect consumers' interests. The general rules applicable to these products are: (i) General foodstuffs hygiene rules according to Regulation (EC) No 852/2004 of the European Parliament and of the Council (OJ L-139 30/04/2004) (CELEX 32004R0852); (ii) General conditions concerning contaminants in food; (iii) Special provisions on GM foods and novel foods specified in Regulation (EC) No 1829/2003 of the European Parliament and of the Council; (iv) General conditions for preparation of foodstuffs; and (iv) Official control of foodstuffs.

5. A210 - Tolerance limits for residues of or contamination by certain (non-microbiological) substances

This regulation contains three sub-regulations which establish the maximum residue or tolerance limit of substances such as fertilisers, pesticides and certain chemicals and metals that are used during production of food and feed process but which are not the intended ingredients of the food and feed so produced. The measure additionally includes the permissible maximum levels for non- microbiological contaminants. The three sub-regulations are:

5.1 Control of contaminants in foodstuffs: Introduced in October 2010, this regulation provides that in order to ensure a high level of consumer protection, foodstuffs imported into the EU markets are safe to eat and should not contain contaminants at levels which could threaten human health. Such contaminants may be present in food (including fruits and vegetables, meat, fish, cereals, spices, dairy products, etc.) as a result of the various stages of production, packaging, transport or holding of the given product, and also might result from environmental contamination. Council Regulation (EEC) No 315/93 of 8 February 1993 lays down EC procedures for contaminants in food, and regulates the presence of such contaminants in foodstuffs traded in the EU. The Feb 18993 regulation specifies that food contaminants which are unacceptable for public health (such as toxicological levels) are not to be placed in the EU markets, that contaminant levels should be kept as low as can reasonably be achieved following recommended good working practices, and that maximum levels may be set for certain contaminants in order to protect public health. The regulation also sets limits for nitrate in lettuce, spinach and baby foods; limits for various mycotoxins in edible products (groundnuts, nuts, dried fruit (including dried vine fruit) and related products, cereals and cereal products, milk, infant formulae, dietary foods intended for infants, spices, fruit juices, coffee products, wine, spirit drinks, cider, apple products, processed cereal based foods for infants and young children and baby foods); limits for various heavy metals in various products (milk, meat, fish, cereals, vegetables, fruit and wines); limits for 3-MCPD in Hydrolysed vegetable protein and soy sauce; limits for dioxins and dioxin-like PCBs in meat, fish, milk, eggs, oils and fats; and limits for PAHs in oils and fats, smoked meats, smoked fish, fish, crustaceans and bivalve molluscs, infant foods.

5.2 Control of pesticide residues in plant and animal products intended for human consumption: Introduced in October 2010, this regulation specifies measures for control of pesticide residues in the EU. The maximum residue levels (MRLs) are specified in Regulation (EC) No 396/2005, which contains a fully harmonised set of rules for pesticide residues, and provisions for the setting of EU pesticide MRLs in food and feed. Imports of plant and animal products must comply with the specified MRLs aimed to protect consumers from exposure to unacceptable levels of pesticide residues. Annexes to the Regulation (EC) No 396/2005 sets out the list of products subject to control and MRLs applicable to them: The list of products to which the MRLs apply includes animal products, fruits, vegetables, cereals, spices and certain edible plants, and the specific MRLs are listed in related annexes to the regulation, including pesticides for which no MRLs are needed because of their low risk. Specific information on the substances and the MRLs included in the listed Annexes are provided through the EU Pesticide Database. EU Member State competent authorities are responsible for the control and enforcement of the MRLs; and participation in coordinated multiannual Community control programmes on pesticide residues in plant and animal foods.

5.3 Marketing standards for fresh fruit and vegetables: This regulation was introduced in October 2009 and specifically targets fruits and vegetables which are intended to be sold in fresh form to the EU consumers. It provides that EU competent authorities should perform documental and/or physical inspections of imported products in order to check their conformity with the EU general marketing standards laid down in Annex I Part A of the EC Implementing Regulation (EC) No 543/2011 (OJ L-157 15/06/2011); which refers to minimum quality requirements, minimum maturity requirements, tolerance limits on MRLs, and marking of origin of the produce.

6. A220 - Restricted use of certain substances in foods and feeds and their contact materials

6.A220 - Restricted use of certain substances in foods and feeds and their contact materials
This is a health control regulation which restricts and/or prohibits the use of certain substances contained in food and feed of non-animal origin imported and traded in the EU markets; including restrictions on substances contained in food containers that might migrate to food. The regulation was introduced in October 2009, and specifies general conditions concerning contaminant substances that may be present in food and feed as a result of the various stages of production and marketing of such products, or due to environmental pollution. Since the contaminants represent a real risk to food safety, the EU has taken measures to minimise the potential risks by setting maximum levels for certain contaminants in foodstuffs; including maximum levels of certain contaminants in foodstuffs (such as fruits, vegetables, nuts, cereals, fruit juices, etc.) which must not exceed those specified in EC Regulation (EC) No 1881/2006). The Regulation covers four different categories of contaminants: nitrates, aflatoxins, heavy metals (lead, cadmium, mercury) and 3-monochloropropane-1,2diol (3-MCPD), etc. In general, the maximum contaminant levels relate to the edible part of the foodstuffs and apply also to the ingredients used for the production of compound foodstuffs. The regulation also sets maximum levels of pesticide residues on food which EU Member States may use to restrict sale of certain food products within their territories if the quantity of pesticide residues exceeds the permitted maximum levels; thus presenting an unacceptable risk to humans. These limits depend on the toxicity of the substance in question. Regulation (EC) No 396/2005 sets harmonised maximum levels of pesticide residues for agricultural products or parts thereof intended for use as fresh, processed and/or composite food. The regulation further specifies maximum levels of radioactive contamination of foodstuffs through Regulation (EC) No 3954/1987.

7. A310 - Labelling requirements

This regulation is broken down into four sub-regulations which contain measures on labelling requirements; including defining the information directly related to food safety which should be provided to the consumer. The requirements also include measures for regulating the kind, colour and size of printing on packages and labels, and also define the information that should be provided to the consumer. Labelling is specified in the regulation as any written, electronic, or graphic communication on the packaging or on a separate but associated label, or on the product itself. It may include requirements concerning the official language to be used, as well as technical information on the product, such as voltage, components, instructions on use, and safety and security advice. The three sub-regulations are:

7.1 **Health control on foodstuffs of non-animal origin:** Introduced in October 2009, this sub-regulation sets out specific provisions for certain groups of products and for foodstuffs used for particular nutritional purposes. Companies that want to place a novel food on the EU market must submit their application to the competent body of an EU Member State for risk assessment purposes. As a result of this assessment, an authorisation decision may be taken, which defines the scope of the authorisation, the conditions of product use, the designation of the food or food ingredient and its specification, and the specific labelling requirements. Novel foods or novel food ingredients considered by an EU national food assessment body as substantially equivalent to existing foods or food ingredients may follow a simplified procedure, only requiring notifications from the producing company. The legislation lays down four (4) rules relating to treatment of foodstuffs, food ingredients and their conditions of use in order to protect the health of consumers and guarantee the free circulation of foodstuffs in the EU markets; namely (i) General foodstuffs hygiene rules, (ii) General conditions concerning contaminants in food, (iii) Special provisions on GM foods and novel foods, and (iv) General conditions on preparation of foodstuffs. Additionally, specific provisions for groups of foods are laid down in specific EC directives, which include compositional requirements, hygiene requirements, and list of additives, purity criteria, and specific labelling requirements.

7.2 **Labelling for foodstuffs:** This sub-regulation which was introduced in October 2009 and specifies two types of labelling provisions which are applicable to foodstuffs, namely: (i) General rules on food labelling which include name of the food, list of ingredients, net quantity, minimum durability date, minimum durability date, storage conditions or conditions of use, country of origin or place of provenance, instructions of use, alcoholic strength, lot marking, and nutrition declaration. (ii) Specific provisions for certain groups of products, including: labelling of GM foods and novel foods, labelling of foodstuffs for particular nutritional purposes, labelling of food additives and flavourings, and labelling of materials intended to come into contact with food.

7.3 **Traceability, compliance and responsibility in food and feed:** Introduced in January 2013, this sub-regulation requires that food or feed which is traded or likely to be traded in EU markets should be adequately labelled or identified to facilitate its traceability, through relevant documentation or information on the product particulars. The traceability requirement aims to allow EU competent authorities to respond on potential risks that may arise in food and feed, enable targeted withdrawals of unsafe food from the market, and for exporters to provide accurate information to the public; thereby minimising health risks and trade disruption on traded food and feed.

7.4 **Products from organic production:** This sub-regulation was introduced in October 2009 and spells out requirements for organic products imported into EU from non-EU countries. If such products are labelled with indications that refer to organic production, they have to be produced in accordance with EC production rules, and must be subjected to inspection requirements that are in compliance with, or equivalent to EU legislation.

8. A330 - Packaging requirements

The regulation on packaging specifies requirements for ensuring there are sufficient health controls on foodstuffs of non-animal origin imported into EU in order to prevent risks to public health and protect consumers' interests. The regulation was introduced in January 2013, and defines measures for regulating the mode in which goods must or cannot be packed, and the packaging materials to be used in a package, all which are directly related to food safety.

Specifically the regulation provides that materials and articles intended to come into contact with foodstuffs must be manufactured in a manner which ensures that they do not transfer their constituents to food in quantities which could endanger human health, change the composition of the food in an unacceptable way or deteriorate the taste and odour of foodstuffs. Regulation (EC) No 1935/2004 establishes a list of groups of materials and articles (such us plastics, ceramics, rubbers, paper, glass, etc.) which may be covered by specific measures that include a list of the authorised substances, special conditions of use, purity standards, etc. Specific measures exist for ceramics, regenerated cellulose and plastics. The relevant hygiene rules on foods which food business operators in non-EU countries are required to observe are contained in Regulation (EC) No. 852/2004; and they provide that business operators are responsible for monitoring the food safety of products and processes, establishing measures to ensure general hygiene in primary production and at all stages of production, processing and distribution of food; ensuring they apply microbiological criteria and procedures that guarantee observance of Hazard Analysis and Critical Control Point (HACCP) principles; and for approval and registration of establishments which produce goods intended for EU markets.

9. A410 - Microbiological criteria of the final product

This measure was introduced in October 2009 and specifies the microorganisms of concern and/or their toxins/ metabolites, the reason for such concern, the analytical methods for their detection, and the procedure for their quantification in the final product. It provides that microbiological limits should take into consideration the risk associated with the microorganisms, the conditions under which the product is expected to be handled and consumed, the likelihood of uneven distribution of microorganisms in the product, and the inherent variability of the analytical procedure.

Specifically the regulation provides that imports of foodstuffs of non-animal origin into the EU must comply with general conditions and specific provisions designed to prevent risk to public health and protect consumers' interests. The general rules applicable to these products are: (i) General foodstuffs hygiene rules specified in Regulation (EC) No 852/2004; (ii) General conditions concerning contaminants in food; (iii) Special provisions on Genetically Modified (GM) foods and novel foods specified in Regulation (EC) No 1829/2003) and Regulation (EC) No 258/97; and General conditions for preparation and control of foodstuffs.

10. A420 - Hygienic practices during production related to SPS conditions

This regulation was introduced in October 2009 and specifies that establishments and equipment used during the manufacturing and processing stages of the products should be clean and meet sanitary conditions. The measure also includes good hygienic practices for the personnel taking part in any stage of the manufacturing process.

It specifically provides the relevant hygiene rules on food which need to be observed by food business operators in non-EU countries as contained in Regulation (EC) No. 852/2004, the general obligations of the operator in monitoring the food safety of products and processes, the general hygiene provisions for primary production and detailed requirements for all stages of production, processing and distribution of food; the microbiological criteria for products as spelt out in Regulation (EC) No 2073/2005, the procedures for observing Hazard Analysis and Critical Control Point (HACCP) principles; and the procedure for approval and registration of establishments which produce goods intended for EU markets.

11. A630 - Food and feed processing

This regulation spells out requirements relating to how food and feed production should take place in order to meet sanitary conditions for the final products. Introduced in October 2009, it provides the general hygiene provisions for primary production and detailed requirements for all stages of production, processing and distribution of food; special provisions on Genetically Modified (GM) food and novel food in order to ensure the highest level of protection of human health. The legislation also provides for a single authorisation procedure for trade in food containing, consisting of or derived from Genetically Modified Organisms (GMOs). For GMO foods, an application must be sent to the competent authority of an EU Member State and then referred to the European Food Safety Authority (EFSA) to carry out a risk assessment. On the basis of the opinion of EFSA, the EC drafts a proposal for granting or refusing the authorisation, which must be approved by the Standing Committee on the Food Chain and Animal Health. The authorised food and feed are thereafter entered into the Community Register of GM food and feed.

12. A830 - Certification requirement

This legislation provides that certification of conformity with a given regulation required by an EU importing country may be issued in the EU importing or non-EU exporting country. The regulation is broken down into four (4) sub-regulations namely:

- **12.1 EC Implementing Regulation 2020/466:** Introduced in March 2020, the regulation provides for temporary measures on foodstuff of animal and non-animal origin aimed to contain risks to human, animal and plant health and animal welfare during certain serious disruptions of EU Member States' control systems such as the coronavirus epidemic (COVID-19). The regulation spells out official controls and other official activities such as official certificates which may exceptionally be required in the form of electronic copies of the original provided the person who presents such certificate also presents to the EU competent authority a statement affirming that the original official certificate will be submitted as soon as technically feasible. When performing such official controls, the EU competent authority is required to take into account the risk of non-compliance on animals and goods exported into EU, and the exporters' past record regarding official controls performed on compliance with the rules specified in Regulation (EU) 2017/625.
- **12.2 EU Overview of Import Procedures:** introduced in March 2020, the regulation requires that imports of plants and plant products must comply with certain phytosanitary measures that basically require the goods to: (i) be accompanied by a phytosanitary certificate issued by the designated authorities of the exporting country, (ii) undergo customs inspections at the designated Border Inspection Post at the port of entry into the EU, (iii) be imported into the EU by an EU registered importer whose details appear in an EU Member State's official Register; and (v) be notified to the customs office before arrival at the EU port of entry.
- **12.3 Marketing requirements for seeds and plant propagating material:** This legislation was introduced in October 2009, and spells out special provisions applicable to Genetically Modified (GM) plants and seeds. In this respect, GM seed varieties have to be approved and authorised in the EU for cultivation as required under Directive 2001/18/EC, or before they are marketed in the EU. Authorisation is only granted after a positive scientific assessment has concluded that no unacceptable risks to the environment or human health is likely to appear. All GM seeds variety have to be labelled as such. The European Seed Certification Agencies provides information on seed certification requirements.
- **12.4 Marketing standards for fresh fruit and vegetables:** introduced in October 2009, this regulation provides that if the imported fresh fruit and vegetables conform to the EU marketing standards, the inspection bodies in the goods originating country issues a certificate of conformity which must be presented at the EU port of importation in order to be released for circulation into EU markets. All goods falling under this regulation must be intended for sale in fresh form to the EU consumers.

13. A840 - Inspection requirement

This regulation provides that product inspection required by the EU importing country may be performed by public or private entities, but laboratory analysis is not included as part of these requirements. It contains two sub-regulations, namely:

13.1 European Union - Overview of Import Procedures: This sub-regulation was introduced in March 2020, and provides that imports of plants and plant products must comply with certain phytosanitary measures that basically require the goods must: (i) be accompanied by a phytosanitary certificate issued by the designated authorities of the exporting country; (ii) undergo customs inspections at the designated Border Inspection Post at the point of entry into the EU; (iii) be imported into the EU by a registered importer with whose details appear in a Member State's official Register; and (iv) be notified to the customs office before arrival at the EU port of entry. 11 related marketing standards for agricultural and fishery products which are supplied in fresh form to the consumer are laid out, aimed to guarantee the same level of quality for all products placed on the EU market. These marketing standards are spelt out in Council Regulation (EU) No 1308/2013 which establishes a common marketing system for all the agricultural products traded in EU. They take into account that may vary in in freshness, size, quality, presentation, tolerances, etc. The marketing standards may cover classification by quality, size or weight, packing, presentation and labelling. EU Member States are responsible for ensuring that the imported agricultural and fishery products comply with these marketing standards through documental and/or physical inspections. The EC Agriculture and Rural Development, Agricultural Markets (http://ec.europa.eu/agriculture/markets/index_en.htm) gives details of the specific marketing standards that must be adhered to.

13.2 Marketing standards for fresh fruit and vegetables: This regulation was introduced in June 2011 and provides requirements on inspection of marketing standards. According to the Implementing Regulation (EU) No 1308/2013 fruits and vegetables which are intended to be sold fresh to EU consumers may only be marketed if they are sound, fair and of marketable quality, and if the country of origin is indicated. The competent authorities designated by the EU Member States (MSs) perform documental and/or physical inspections of the imported products in order to check their conformity with the EU general marketing standards laid down in Annex I Part A of Commission Implementing Regulation (EC) No 543/2011, which specifies: minimum quality requirements; minimum maturity requirements; tolerance; and marking of origin of produce.

14. A850 - Traceability requirements

This regulation was introduced in January 2013, and provides information disclosure requirements that make it possible to track a product through the stages of production, processing and distribution. The measure includes record keeping requirements by the producer. It specifically provides requirements on traceability, compliance and responsibilities of food and feed exporters. The law defines traceability as the ability to trace and follow any food, feed, food-producing animal or substance that is used for consumption through all stages of its production, processing and distribution in case health risks associated with the product are detected during the supply chain.

15. A851 - Origin of materials and parts

This regulation defines requirements for the disclosure of information on the origin of materials and parts used in the final product. The measure also includes recordkeeping requirements. It is broken down into two sub-regulations, namely:

15.1 European Union - Overview of Import Procedures: This sub-regulation was introduced in March 2020 through Regulation (EC) No 178/2002 which lays down the general principles and requirements of EU Food Law, which covers all stages of food/feed production and distribution. EU importers of food and feed products are required to identify and register the exporter in the country of origin, in order to fulfil the requirements for traceability.

15.2 Health control of foodstuffs of non-animal origin: This sub-regulation provides that novel foods[98] must undergo a safety assessment before being placed on the EU market to ensure prevention of risk to public health and protect consumers' interests. Companies that want to place a novel food on the EU market must submit their application to the competent body of a Member State for risk assessment purposes. As a result of this assessment, an authorisation decision may be taken to define the scope of the authorisation, the conditions of use, the designation of the food or food ingredient, its specification and the specific labelling requirements. Novel foods and ingredients must be considered by an EU national food assessment body as substantially equivalent to existing foods or food ingredients before being approved for sale in EU. The specific rules applicable to these products are: (i) General foodstuffs hygiene rules spelt out in Regulation (EC) No 852/2004; (ii) General conditions concerning contaminants in food; (iii) Special provisions on Genetically Modified (GM) food and novel food falling under Regulation (EC) No 1829/2003 and Regulation (EC) No 258/97; and (iv) General conditions for preparation control of foodstuffs.

16. A852 - Processing history

This regulation was introduced in October 2009 and sets out requirements relating to the disclosure of information during all stages of production of a product intended for EU markets. The measure includes recordkeeping information on the location, processing methods, equipment, and materials used in production of the product exported into EU. The relevant hygiene rules which must be observed by food business operators in non-EU countries are contained in Regulation (EC) No. 852/2004; which spells out the obligation of the operator in monitoring the food safety of products and processes, hygiene provisions for primary production and detailed requirements for all stages of production, processing and distribution of food, microbiological criteria specific in Regulation (EC) No 2073/2005, procedures to ensure observance of HACCP principles, and procedures for approval and registration of establishments that produce products intended for EU market. Control of foodstuffs Regulation (EC) No 882/2004 further establishes the EU framework rules for official controls on foodstuffs. The competent authorities in EU Member States are required to carry out regular controls on imported food of non-animal origin to ensure they comply with the EU general health rules designed to protect health and interests of consumers. The controls may apply to imports into the EU and to any stage of the food chain (manufacture, processing, storage, transport, distribution, and trade), and may include a systematic documentary check, a random identity check, and a physical check.

17. A853 - Distribution and location of products after delivery

This regulation was introduced in October 2009 and provides requirements for the disclosure of information on when and how the goods have been distributed from the time of their delivery to distributors until they reach the final consumer in EU. This measure includes recordkeeping requirements. The relevant hygiene rules which have to be observed by food business operators in non-EU countries are contained in Regulation (EC) No. 852/2004; which include general hygiene provisions for primary production and detailed requirements for all stages of production, processing and distribution of food.

18. B140 - Authorization requirement for importing certain products

Under this regulation which was introduced in March 2009, authorization, permits, approvals or licences related to a consignment must be received from a relevant government agency before the importation can take place in order to comply with relevant technical regulations or conformity-assessment procedures. The specific regulation for this measure is (EC) No 1907/2006 adopted in December 2006, which spells out the procedures for registration, evaluation, authorisation and restriction of chemicals (REACH). In principle, the REACH regulation applies to all chemicals, including those used in industrial processes also in everyday life, for example those used in cleaning products, paints, etc. as well as those used in clothing, furniture and electrical appliances.

98. Novel foods and food ingredients are defined in the regulation as foods that had not been used for human consumption to a significant degree within the EU before 15 May 1997.

The REACH regulation replaced several EU laws related to chemicals and their use, and thus complements other environmental and safety legislation except those that are sector specific (i.e. detergents, cosmetics, biocides, etc.). The European Chemicals Agency (ECHA) is the central point in the REACH system, which manages and coordinates the registration, evaluation, authorisation and restriction processes of chemical substances to ensure consistency in their management across the EU. Plant protection products and biocidal products spelt out in Regulation (EC) No 1107/2009 lays down the conditions for the authorisation of plant protection products in commercial form and/or the approval of active substances contained these products, as well as the rules for their placing on the market, use and control within EU.

19. B320 - Marking requirements

This regulation defines marking standards on fresh fruits and vegetables which should be conducted in the country of origin if the goods are intended for EU markets. The regulation was introduced in October 2009.

20. B700 - Product quality, safety or performance requirement

This regulation contains the final product requirements regarding safety (for example, fire resistance), performance (effectiveness in achieving the intended or claimed result), quality (for example, content of defined ingredients and durability), or other specifications relating to technical barriers to trade not covered under other measures. The regulation contains three sub-regulations, namely:

20.1 Marketing requirements for seeds and plant propagating materials: This legislation was introduced in October 2009, and provides specific marketing conditions for certain groups of seeds and plant propagating materials, special provisions applicable to Genetically Modified (GM) plants and seeds, and specific marketing conditions for seeds and plant propagating materials. The legislation establishes specific conditions for: oil and fibre plants, cereals, vegetables, seed potatoes, beet seed, vines, fruit plants, fodder plants, ornamental plants, and forests. Each group of products is ruled by a specific Directive establishing the particular conditions related to criteria for identity, purity of varieties, and other details about the presence and control of harmful organisms and diseases. Summaries and consolidated texts of the specific Directives are found under "Seed and Plant Propagating Material" of the Directorate General for Health and Consumers (http://ec.europa.eu/food/plant/propagation/index_en.htm).The seeds and plant propagating material from non-EU countries may only be marketed in EU if they offer the same guarantees as the products produced in the EU and comply with the conditions laid down in EU legislation. Council Decision 2003/17/EC lists the countries complying with EU requisites and establishes the conditions on the equivalence for field inspections to be carried out in non-EU countries for specified seeds and seed-producing crops (fodder, cereal, beet seeds and oil and fibre plants).

20.2 Marketing standards for fresh fruit and vegetables: This regulation was introduced in October 2009, and requires that imports of fruits and vegetables into the EU must comply with the EU-harmonised marketing standards.

20.3 Marketing standards for fresh fruit and vegetables for Kenya: this regulation was introduced in October 2011 and is specific to fresh fruits and vegetables imported from Kenya. According to Regulation (EU) No 1308/2013, Kenyan originating fruits and vegetables which are intended to be sold fresh to EU consumers, may only be marketed if they are sound, fair and of marketable quality and if the country of origin is indicated. The competent authorities designated by the EU Member States are mandated to perform documental and/or physical inspections of the imported products in order to check their conformity with the following EU general marketing standards laid down in Annex I Part A of EC Implementing Regulation (EC) No 543/2011: (i) Minimum quality requirements; (ii) minimum maturity requirements; (iii) tolerance; and (iv) marking of origin of produce. The following fruits and vegetables have specific marketing standards fixed in Annex I Part B of EC Implementing Regulation (EC) No 543/2011: apples, citrus fruit, kiwifruit lettuces, curled leaved and broad-leaved endives, peaches and nectarines, pears, strawberries, sweet peppers, table grapes, and tomatoes.

21. B840 - Inspection requirements

Product inspections required by the EU importing country may be performed by public or private entities; but laboratory analysis is not included as part of requirements. The legislation comprises two sub-regulations, namely:

21.1 Marketing standards for fresh fruit and vegetables: according to this regulation which was introduced in October 2011, inspection of marketing standards should be conducted in accordance to EC Implementing Regulation (EU) No 1308/2013, which provides that fruits and vegetables which are intended to be sold in fresh form to EU consumers may only be marketed if they are sound, fair and of marketable quality and if the country of origin is indicated. The competent authorities designated by the EU Member States (MSs) perform documental and/or physical inspections of the imported products in order to check their conformity with the following EU general marketing standards laid down in Annex I Part A of Commission Implementing Regulation (EC) No 543/2011 (OJ L-157 15/06/2011): •Minimum quality requirements; •Minimum maturity requirements; •Tolerance; •Marking of origin of produce.

21.2 Marketing standards for fresh fruit and vegetables for Kenya: This is a Kenya-specific regulation which specifies that inspection of marketing standards for fruits and vegetables which are intended to be sold fresh to the EU consumers should be conducted according to Council Regulation (EU) No 1308/2013. The regulation provides that fresh fruits and vegetables may only be marketed in EU if they are sound, fair and of marketable quality, and if Kenya as the country of origin is indicated. The competent authorities designated by the EU Member States are mandated to perform documental and/or physical inspections of the imported products in order to check their conformity with the EU general marketing standards laid down in Annex I Part A of Commission Implementing Regulation (EC) No 543/2011; which includes: minimum quality requirements, minimum maturity requirements, tolerance, and marking of origin of produce.

22. E100 - Non-automatic import-licensing procedures other than authorizations covered under SPS and TBT chapters

This regulation which was introduced in October 2009 is an import-licensing procedure that excludes other procedures covered under SPS measures and TBT[99]. The import licensing approval under this regulation may either be granted on a discretionary basis or may require specific criteria to be met before it is granted. It provides that in order to ascertain that goods have been obtained according to production rules equivalent to those laid down in EU, the EC should conduct thorough investigation into the production process and quality control measures in the goods originating country to ensure they are effective. Where rules are found to be equivalent, the goods origin country is included in the list of authorised countries which are published in Annex III of Regulation (EC) No 1235/2008. Controls should be conducted by recognised inspection bodies or recognised inspection authorities which are mandated to carry out inspections in countries not included in the list of recognised non-EU countries since July 2012, as stated in Annex IV to Regulation (EC) No 1235/2008. The function of these authorities and bodies is to guarantee that products have been produced in compliance with EC production rules laid out in Regulation (EC) No 834/2007), or are equivalent to EC legislation as laid out in Regulation (EC) No 834/2007). Imports of organic products can only take place if these recognised authorities or bodies have approved them. Authorisations to importers are given on a case-by-case basis, and the importers must prove that products were obtained according to production rules equivalent to those laid down by Community legislation to which they were subjected.

99. Technical Barriers to Trade

23. E125 - Licensing for the protection of public health

This regulation was introduced in January 2018 and aims to control imports if they pose risks to public-health. It specifically applies to health control of Genetically Modified (GM) foods and novel foods, and is founded on EC special provisions on Genetically Modified (GM) foods. It provides a single authorisation procedure which is valid throughout the EU for trade in foods that may contain, consist of, or be derived from GM food and novel foods. The application for a GMO authorisation should include a supporting document with experimental data (summaries, results and annexes of the studies referred) and a risk assessment, which should be submitted to the competent authority of any EU Member State and then referred to the European Food Safety Authority (EFSA) to conduct a risk assessment. On the basis of the opinion of EFSA, the EC then drafts a proposal for granting or refusing the authorization of the GMO, which must be approved by the Standing Committee on the Food Chain and Animal Health. The authorised GMO food and/or feed is then entered into the Community Register of GM foods and feeds. GM import-licensing procedures may be included in other procedures which may be separate from those covered under SPS or TBT measures. The approval to import GM foods may either be granted on a discretionary basis or may require specific criteria to be met before granting the approval.

Annex 13: EU Trade Enabling Indicators

TRADE ENABLING FACTOR	2018	2019	2020	2021	2022	Growth (%) 2018-2022
Final consumption expenditure (annual % growth)	2	2	(5)	4	3	
Final consumption expenditure (constant 2015 US$)	10,739,615,192,616	10,915,804,484,761	10,387,881,531,321	10,811,843,200,754	11,149,810,525,027	3.8%
Food imports (% of merchandise imports)	9	9	10	9	9	
GDP (current US$)	15,979,881,686,056	15,692,624,900,173	15,370,461,303,996	17,187,869,517,146	16,641,391,923,811	4.1%
GDP per capita (current US$)	35,749	35,078	34,333	38,436	37,150	3.9%
GDP per capita growth (annual %)	2	2	(6)	6	3	
Imports of goods and services (% of GDP)	45	46	43	47	54	
Imports of goods and services (annual % growth)	4	5	(8)	9	8	
Imports of goods and services (constant 2015 US$)	6,656,141,662,573	6,965,743,211,840	6,416,023,280,174	6,998,218,996,221	7,549,311,887,399	8.4%
Population growth (annual %)	0	0	0	(0)	0	
Population, total	447,001,100	447,367,191	447,692,315	447,179,800	447,956,050	
Population in the large cities (% of urban population)	16	16	16	16	16	
Total urban population (number)	333,091,521	334,356,258	335,592,576	336,271,812	337,964,991	1.5%
Urban population (% of total population)	75	75	75	75	75	

TRADE ENABLING FACTOR	2018	2019	2020	2021	2022	Growth (%) 2018-2022
Railways, goods transported (million ton-km)	10,792	10,542	8,970	10,299		
Time to export, border compliance (hours)	7	7				
Time to export, documentary compliance (hours)	2	2				
Time to import, border compliance (hours)	2	2				
Time to import, documentary compliance (hours)	1	1				
Cost to import, border compliance (US$)	30	30				
Cost to import, documentary compliance (US$)	5	5				

Source: World Development Indicators; World Bank; https://www.worldbank.org

Annex 14: Top European Union Trade Associations

1. BUSINESSEUROPE (Belgium)
2. European Banking Federation (Belgium)
3. Community of European Railway and Infrastructure Companies (Belgium)
4. Confederazione Generale dell'Industria Italiana (Italy)
5. EuroCommerce (Belgium)
6. European Chemical Industry Council (CEFIC) (Belgium)
7. Association des Constructeurs Européens d'Automobiles (Belgium)
8. DigitalEurope (Belgium)
9. European Milk Board (Belgium)
10. Insurance Europe (Belgium)
11. American Chamber of Commerce to the European Union (Belgium)
12. Deutscher Industrie-und Handelskammertag e.V. (Germany)
13. European agri-cooperatives (Belgium)
14. European Farmers (Belgium)
15. European Fund and Asset Management Association (Belgium)
16. Confederation of British Industry (UK)
17. EURELECTRIC aisbl (Belgium)
18. EUROCHAMBRES- Association of European Chambers of Commerce and Industry (Belgium)
19. European Wind Energy Association (Belgium)
20. IFPI Representing recording industry worldwide (Belgium)
21. ORGALIME (Belgium)
22. Zentralverband des Deutschen Handwerks e.V. (Germany)
23. Bundesverband der Deutschen Industrie e.V. (Germany)
24. Confederazione Italiana Agricoltori (Italy)
25. Deutscher Sparkassen-und Giroverband (Germany)
26. Fertilizers Europe (Belgium)
27. International Association of Oil & Gas Producers (UK)
28. Bundesverband der Energie-und Wasserwirtschaft e.V. (BDEW) (Germany)
29. CLECAT- European Association for Forwarding, Transport, Logistic and Customs Services (Belgium)
30. EEF, The Manufacturers' Organisation (UK)
31. Eurometaux (Belgium)
32. EuropaBio (Belgium)
33. European Advertising Standards Alliance (Belgium)
34. European Private Equity and Venture Capital Association (Belgium)
35. European Savings and Retail Banking Group (Belgium)
36. Gesamtverband der Arbeitgeberverbände der Metall-und Elektro-Industrie e.V. (Germany)
37. Gesamtverband der Deutschen Versicherungswirtschaft e.V. (Germany)
38. GSMA Europe (Belgium)
39. Standing Committee of European Doctors (Belgium)
40. Zentralverband Elektrotechnik-und Elektronikindustrie e.V. (Germany)
41. Association for Financial Markets in Europe (UK)
42. Association Française des Entreprises Privées (France)
43. Association Française des Sociétés Financières (France)
44. Association of European Airlines (Belgium)
45. Belgian-Italian Chamber of Commerce (Belgium)
46. British Agriculture Bureau (Belgium)
47. CECED- European Committee of Domestic Equipment Manufacturers (Belgium)
48. Comité national des pêches maritimes et des élevages marins (France)
49. Danish Chamber of Commerce (Denmark)
50. Danish Dairy Board Brussels s.a. (Denmark)
51. Danish Energy Association/Dansk Energi (Denmark)
52. European Aluminium Association Aisbl (Belgium)
53. European Broadcasting Union/Union Européenne de Radio-Télévision Aisbl (Belgium)
54. European Dairy Association Aisbl (Belgium)
55. European Federation of Nurses Associations (Belgium)
56. European Fur Breeders' Association (Belgium)
57. European Producers Union of Renewable Ethanol (Belgium)
58. Fédération Française des Assurance (France)
59. FuelsEurope (Belgium)
60. Landbrug & Fodevarer- Danish Agriculture and Food Council (Denmark)
61. spiritsEurope (Belgium)
62. StudiCentro (Italy)
63. UITP- International Association of Public Transport (Belgium)
64. UNIFE (Belgium)
65. AIM European Brands Association (Belgium)
66. AMICE- Association of Mutual Insurers and Insurance Cooperatives in Europe (Belgium)
67. Association des Banques et Banquiers, Luxembourg (Luxembourg)
68. Association Internationale de la Mutualité (Belgium)

69. Association of Commercial Television (Europe) (Belgium)
70. Association of the European Heating Industry (Belgium)
71. Assogestioni- Italian Investment Management Association (Italy)
72. Bundesverband der Deutschen Entsorgungs-, Wasser-und Rohstoffwirtschaft e.V. (Germany)
73. Bundesverband der Deutschen Süsswarenindustrie (Germany)
74. Bundesvereinigung der Deutschen Arbeitgeberverbände e.V. (Germany)
75. CECE- Committee for European Construction Equipment (Belgium)
76. Central Europe Energy Partners (Belgium)
77. Cerame-Unie (Belgium)
78. Comité Européen des Fabricants de Sucre (Belgium)
79. Confcommercio-Imprese per l'Italia (Italy)
80. Conféderation Européenne des Propriétaires Forestiers (Belgium)
81. Confederation of Businessmen and Industrialists of Turkey (Turkey)
82. Confederation of European Community Cigarette Manufacturers (Belgium)
83. Confederation of European Paper Industries (Belgium)
84. Confederation of European Waste-to-Energy Plants (Germany)
85. Conseil des Notariats de l'Union Européenne (Belgium)
86. Council of European Employers of the Metal, Engineering and Technology-based Industries (Belgium)
87. Deutscher Anwaltverein (Germany)
88. ECG- The Association of European Vehicle Logistics (Belgium)
89. ECTAA, Group of National Travel Agents' and Tour Operators' Association within the EU (Belgium)
90. EDSO for Smart Grids (Belgium)
91. Eucomed (Belgium)
92. Eurogas aisbl (Belgium)
93. European Aggregates Association (Belgium)
94. European Association for Aquatic Mammals (Belgium)
95. European Biodiesel Board (Belgium)
96. European Biomass Association (Belgium)
97. European Builders Confederation Aisbl (Belgium)
98. European Community Shipowner's Associations (Belgium)
99. European Federation of Waste Management and Environmental Services (Belgium)
100. European Public Real Estate Association (Belgium)
101. European Sea Ports Organisation (Belgium)
102. European Smoking Tobacco Association (Belgium)
103. European Snacks Association (UK)
104. European Society of Cardiology (France)
105. European Tyre & Rubber Manufacturers' Association (Belgium)
106. Fédération bancaire française (France)
107. Federation of European Direct and Interactive Marketing (Belgium)
108. Federation of European Publishers (Belgium)
109. Federation of European Securities Exchanges (Belgium)
110. FederlegnoArredo- Federazione Italiana delle Industrie del Legno, del Sughero, del Mobile e dell'Arredamento (Italy)
111. FIGIEFA- Fédération Internationale des Grossistes, Importateurs & Exportateurs en Fournitures Automobiles/International Federation of Automobile Distributors (Belgium)
112. Freshfel Europe- The forum for the European fresh fruits and vegetables chain (Belgium)
113. Handelsverband Deutschland (Germany)
114. HOTREC, Hotels, Restaurants & Cafés in Europe (Belgium)
115. ICI Global (UK)
116. ICPM, The Global Voice of Music Publishing (Switzerland)
117. Industrieverband Agrar e.V. (Germany)
118. Intergraf- European Federation of Print and Digital Communication (Belgium)
119. Law Society of England and Wales (UK)
120. Mouvement des Entreprises de France (France)
121. Nickel Institute (Canada)
122. Pharmaceutical Group of the European Union (Belgium)
123. Romanian Post (Romania)
124. Starch Europe (Belgium)
125. Teknikföretagen (Sweden)
126. The Brewers of Europe (Belgium)
127. The EU Vegetable Oil and Proteinmeal Industry (Belgium)
128. Union Européenne du Commerce du Bétail et des Métiers de la Viande (France)
129. Union Pétrolière Européenne Indépendante (Belgium)
130. ARD Verbindungsbüro Brüssel (Belgium)
131. Association de l'Aviculture, de l'Industrie et du Commerce de Volailles dans les pays de l'Union Européenne asbl (Belgium)
132. Association for Emissions Control by Catalyst (Belgium)
133. Association of the European Self-Medication Industry (Belgium)
134. Associazione delle Imprese del farmaco (Italy)
135. BSA- The Software Alliance (USA)
136. Building Societies Association (UK)
137. Bundesarbeitgeberverband Chemie e.V. (Germany)
138. Bundesverband der Pharmazeutischen Industrie e.V. (Germany)

139. Bundesverband Deutscher Omnibusunternehmer e.V. (Germany)
140. Bundesverband Öffentlicher Banken Deutschlands (Germany)
141. Cable Europe (Belgium)
142. CANSO- Civil Air Navigation Services Organisation (Belgium)
143. CEMA- European Agricultural Machinery (Belgium)
144. Comité Européen des Entreprises Vins (Belgium)
145. Confederazione italiana libere professioni (Italy)
146. Confederazione Nazionale Coldiretti (Italy)
147. Deutscher Bauernverband (Germany)
148. Eurofinas (Belgium)
149. European Association for Coal and Lignite (Belgium)
150. European Association of Mining Industries, Metal Ores & Industrial Minerals (Belgium)
151. European Coalition on Homeopathic and Anthroposophic Medicinal Products (Belgium)
152. European Competitive Telecommunications Association (UK)
153. European Confederation of Private Employment Agencies (Belgium)
154. European Diagnostic Manufacturers Association (Belgium)
155. European Federation for Intelligent Energy Efficiency Services (Belgium)
156. European Federation of Associations of Health Product Manufacturers (Belgium)
157. European Federation of National Associations of Water Services (Belgium)
158. European Gaming and Betting Association (Belgium)
159. European Heat Pump Association (Belgium)
160. European Insulation Manufacturers Association (Belgium)
161. European Magazine Media Association (Belgium)
162. European Money Markets Institute (Belgium)
163. European Mortgage Federation- European Covered Bond Council (Belgium)
164. European Seeds Association (Belgium)
165. European Telecommunications Network Operators' Association (Belgium)
166. European Turbine Network (Belgium)
167. Eurosmart (Belgium)
168. Extended Producer Responsibility Alliance (Belgium)
169. FEBIAC (Belgium)
170. Fédération Européenne des Fabricants d'Aliments Composés (Belgium)
171. Fédération Européenne pour la Santé Animale et la Sécurité Sanitaire (France)
172. Federation of Small Business (UK)
173. Federation of the European Sporting Goods Industry (Belgium)
174. Foreign Trade Association (Belgium)
175. German Renewable Energy Federation (Germany)
176. ICSC Europe (USA)
177. Impala Association Internationale Aisbl (Belgium)
178. Independent Retail Europe (formerly UGAL-Union of Groups of Independent Retailers of Europe)
179. Industrial Mineral Association- Europe (Belgium)
180. International Air Transport Association (Canada)
181. International Emissions Trading Association (Switzerland)
182. International Federation for Animal Health-Europe Aisbl (Belgium)
183. International Trademark Association (USA)
184. Italian Banking, Insurance and Finance Federation (Italy)
185. Koda (Denmark)
186. Leaseurope (Belgium)
187. Motion Pictures Association (USA)
188. Nordic Logistics Association (Belgium)
189. Österreichischer Sparkassenverband (Austria)
190. PensionsEurope (Belgium)
191. Polish Wind Energy Association (Poland)
192. Regroupement Européen pour la Formation et la Reconnaissance en MEDecines non conventionnelles (Belgium)
193. Stowarzyszenie Autorow ZAiKS (Poland)
194. The European Alliance of Companies for Energy Efficiency in Buildings (Belgium)
195. The European Association for the Promotion of Cogeneration
196. The European Organization for Packaging and the Environment (Belgium)
197. The Investment Association (UK)
198. Union Européenne de l'Artisanat et des Petites et Moyennes Entreprises Aisbl (Belgium)
199. Union Internationale des Cinémas (Belgium)
200. Verband der Arzneimittel-Importeure Deutschlands e.V. (Germany)
201. Verband der Automobilindustrie (Germany)
202. Verband der Chemischen Indusrie e.V. (Germany)
203. Verbond Van Belgische Ondernemingen/Fédération des Entreprises de Belgique (Belgium)

Annex 15: Cost and time for importation into Uganda and South Sudan

COUNTRY	INDICATOR NAME	2015	2016	2017	2018	2019	Average 2015-2019	Rating of this market based on International best practice countries
Uganda	Average cost to import a 20-foot container, border compliance (US$)	447	447	447	447	447	447	The average cost of border compliance/ clearance procedures in order to access Uganda market for the period 2015-2019 is poor at an average US$ 447 to clear a 20-foot container compared to Bulgaria; Greece & Switzerland; all which have achieved an average cost US$ 1 for similar process
Uganda	Average cost to import a 20-foot container, documentary compliance (US$)	296	296	296	296	296	296	The average cost of documentary compliance procedures in order to access Uganda market for the period 2015-2019 is poor at an average US$ 296 to clear a 20-foot container compared to EU, Liechtenstein, Canada, S. Korea, New Zealand & Hong Kong average cost; all which have achieved an average US$ 1 for similar process
Uganda	Average time to import a 20-foot container, border compliance (hours)	154	154	154	145	145	151	The average time taken on border compliance procedures in order to access Uganda market during the period 2015-2019 is poor at an average 151 hours to clear a 1-foot container compared to Bulgaria, Greece, and Switzerland; all which have achieved 1 hour for similar process
Uganda	Average time to import a 20-foot container, documentary compliance (hours)	138	138	138	96	96	121	The average time take for documentary compliance procedures in order to access Uganda market during the period 2015-2019 is poor at an average 121 to clear a 20-foot container compared to EU, Canada, S. Korea, New Zealand, and Hong Kong; all which have achieved 1 hour for similar process.
South Sudan	Average cost to import a 20ft foot container; border compliance (US$)	781	781	781	781	781	781	The average cost of border compliance/ clearance procedures in order to access South Sudan market during the period is poor at an average US$ 781 to clear a 20-foot container compared to Bulgaria; Greece & Switzerland; all which have achieved an average cost US$ 1 for similar process

COUNTRY	INDICATOR NAME	2015	2016	2017	2018	2019	Average 2015-2019	Rating of this market based on International best practice countries
South Sudan	Average cost to import a 20ft foot container, documentary compliance (US$)	350	350	350	350	350	350	The average cost of documentary compliance procedures in order to access South Sudan market during the period 2015-2019 is poor at an average US$ 350 to clear a 20-foot container compared to EU, Liechtenstein, Canada, S. Korea, New Zealand & Hong Kong average cost; all which have achieved an average US$ 1 for similar process
South Sudan	Average time to import a 20ft foot container, border compliance (hours)	179	179	179	179	179	179	The average time taken on border compliance procedures in order to access South Sudan market over the period 2015-2019 is poor at an average 179 hours compared to Bulgaria, Greece, and Switzerland; all which have achieved 1 hour for similar process
South Sudan	Average time to import a 20ft foot container, documentary compliance (hours)	360	360	360	360	360	360	The average time taken on documentary compliance procedures in order to access South Sudan market over the period 2015-2019 is poor at an average 360 to clear a 20-foot container compared to EU, Canada, S. Korea, New Zealand, and Hong Kong; all which have achieved 1 hour for a similar process.

Source: World Development Indicators; World Bank; https://www.worldbank.org

Annex 16: Key Economic Indicators for Uganda and South Sudan markets

COUNTRY	INDICATOR NAME	2018	2019	2020	2021	2022	Average 2018-2022	International best practice countries	
Uganda	Final consumption expenditure (% of GDP)	81	80	81	82	81	81	Country	Consumption (% of GDP)
								Somalia	153
								West Bank and Gaza	114
								Comoros	107
								Haiti	105
								Burundi	105
								Marshall Islands	104
								Central African Rep.	102
								El Salvador	101
								Moldova	101
Uganda	Final consumption expenditure (annual % growth)	10	7	3	6	4	6	Country	Average annual growth 2018-2022
								Sierra Leone	9
								Central African Rep.	8
								Turkey	7
								Rwanda	7
								Bangladesh	7
								Uzbekistan	6
								Nepal	6
								Georgia	6
Uganda	GDP (current US$ million)	33	35.3	37.6	40.5	45.6	38.4	Country	Average GDP 2018-2022 (Trillion)
								USA	14
								China	10
								Japan	3
								Germany	2.5

COUNTRY	INDICATOR NAME	2018	2019	2020	2021	2022	Average 2018-2022	International best practice countries	
Uganda	GDP growth (annual %)	6	6	3	4	5	5	Country	Average annual GDP growth (%) 2018-2022
								Guyana	26
								Ireland	9
								Timor-Leste	9
								Tajikistan	7
								Maldives	7
								Rwanda	7
								Bangladesh	7
								Ethiopia	6
								Benin	6
								Niger	6
								Viet Nam	6
Uganda	GDP per capita (current US$)	793	823	847	883	964	862	Country	Average GDP per capita (US$) 2018-2022
								Monaco	92,646
								Luxembourg	66,586
								Bermuda	65,350
								Switzerland	54,265
								Ireland	51,773
								Norway	48,227
Uganda	GDP per capita growth (annual %)	3	3	(0)	0	2	1	Country	Average GDP per capita growth 2015-2022
								Guyana	16
								Ireland	5
								Timor-Leste	4
								Marshall Islands	4

COUNTRY	INDICATOR NAME	2018	2019	2020	2021	2022	Average 2018-2022	International best practice countries	
Uganda	Population growth (annual %)	3	3	3	3	3	3	Country	Average population growth (%) 2015-2019
								Niger	4
								Somalia	3
								Angola	3
Uganda	Population in largest city (million)	3	3.14	3.3	3.5	3.7		Country	Population in 2022 (million)
								Japan	37.3
								India	32.1
								China	28.5
								Brazil	22.4
								Mexico	22.1
								Bangladesh	22.5
								Egypt, Arab Rep.	21.8
Uganda	Population in the largest city (% of urban population)	30	30	30	30	30	30	Country	Average population in largest city as a percentage of total urban population 2015-2019
								Singapore	100
								Hong Kong	100
								Macao	97
								Paraguay	81
								Puerto Rico	81
								Kuwait	72
								Mongolia	70
								Djibouti	68
								Guinea-Bissau	67

<table>
<tr><th>COUNTRY</th><th>INDICATOR NAME</th><th>2018</th><th>2019</th><th>2020</th><th>2021</th><th>2022</th><th>Average 2018-2022</th><th>International best practice countries</th></tr>
<tr><td>Uganda</td><td>Total population (million)</td><td>41.5</td><td>43</td><td>44.4</td><td>46</td><td>47.3</td><td></td><td><table><tr><th>Country</th><th>Total population (million)</th></tr><tr><td>India</td><td>1,417.2</td></tr><tr><td>China</td><td>1,412.2</td></tr><tr><td>United States</td><td>333.3</td></tr><tr><td>Indonesia</td><td>275.5</td></tr><tr><td>Pakistan</td><td>236</td></tr><tr><td>Nigeria</td><td>218.5</td></tr></table></td></tr>
<tr><td>South Sudan</td><td>Final consumption expenditure (% of GDP)</td><td></td><td></td><td></td><td></td><td></td><td>-</td><td rowspan="7">Data is not available on these indicators and so it is not possible to assess the size and consumption patterns South Sudan based on these indicators.</td></tr>
<tr><td>South Sudan</td><td>Final consumption expenditure (annual % growth)</td><td></td><td></td><td></td><td></td><td></td><td>-</td></tr>
<tr><td>South Sudan</td><td>GDP (current US$)</td><td></td><td></td><td></td><td></td><td></td><td>-</td></tr>
<tr><td>South Sudan</td><td>GDP growth (annual %)</td><td></td><td></td><td></td><td></td><td></td><td>-</td></tr>
<tr><td>South Sudan</td><td>GDP per capita (current US$)</td><td></td><td></td><td></td><td></td><td></td><td>-</td></tr>
<tr><td>South Sudan</td><td>GDP per capita growth (annual %)</td><td></td><td></td><td></td><td></td><td></td><td>-</td></tr>
<tr><td>South Sudan</td><td>Population growth (annual %)</td><td>(2)</td><td>1</td><td>2</td><td>1</td><td>2</td><td>0</td></tr>
<tr><td>South Sudan</td><td>Population in largest city (million)</td><td>0.37</td><td>0.4</td><td>0.4</td><td>0.42</td><td>0.44</td><td>0.4</td><td>Population in the largest city (Juba) is very small at an average 0.4 million to encourage imports.</td></tr>
<tr><td>South Sudan</td><td>Population in the largest city (% of urban population)</td><td>18</td><td>19</td><td>19</td><td>19</td><td>19</td><td>19</td><td>The size of population in the largest city (Juba) to total urban population is small and does not seem to be growing over the period 2018-2022. This is not an attraction to imported goods.</td></tr>
<tr><td>South Sudan</td><td>Total population (million)</td><td>10.4</td><td>10.45</td><td>10.61</td><td>10.75</td><td>11</td><td>10.6</td><td>Total population of South Sudan is small and seems concentrated in rural areas but not in urban areas which are mainly not target markets for imports. Other factors which could be an attraction to imports should therefore be considered but not the size of population.</td></tr>
</table>

Source: World Development Indicators; World Bank; https://www.worldbank.org

Annex 17: The AfCFTA Negotiation Phases

COUNTRY	INDICATOR NAME	INDICATOR NAME
Phase 1	Protocol on Trade in Goods	**Schedules of tariff concessions** • Rules of Origin • Customs Cooperation and Mutual Administrative Assistance • Trade Facilitation • Transit Trade and Transit Facilitation • Technical Barriers to Trade • Sanitary and Phytosanitary Measures • Non-tariff Barriers • Trade Remedies
Phase 1	Protocol on Trade in Services	**Schedules of specific commitments in services** • Most Favoured Nation (MFN) Exemption(s) • Annex of Air Transport Services • List of priority sectors • Framework document on regulatory cooperation
Phase 1	Protocol on Rules and Procedures on the Settlement of Disputes	**Working procedures of the panel** • Expert Review • Code of Conduct for Arbitrators and Panellists
Phase 2	Protocol on Investment	**Rules and Procedures Governing the Management and Settlement of Disputes under the Protocol on Investment** • State-State and alternative means of dispute settlement • Investor-state arbitration
Phase 2	• Protocol on Competition Policy • Protocol on Intellectual Property • Protocol on Digital Trade • Protocol on Women and Youth in Trade	To be finalized

Source: The Road to Africa's Single Market: Progress so far and challenges for the future. Africa Policy Research Institute, Berlin, Germany; April 2023 https://afripoli.org/the-road-to-africas-single-market-progress-so-far-and-challenges-for-the-future#

Annex 18: Customs tariffs, trade remedies, and regulatory requirements applied by EU, UK, Asian countries, selected African countries on Fresh Vegetables and Fruits (as at Dec. 2023)

COUNTRY	HS CODE AND PRODUCT DESCRIPTION	APPLIED CUSTOMS TARIFF RATE		Applied Trade Remedies[100]	Number of regulatory requirements
		MFN tariff rate	Preferential tariff rate on Kenyan originating vegetables and fruits		
EU countries	HS 070810 – Fresh or chilled peas (Pisum sativum), shelled or unshelled	8%	0% - EPA	None	40
	HS 070820 – Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled	10.4%	0% - EPA	None	40
	Hs 070890 – Fresh or chilled leguminous vegetables, shelled or unshelled (excl. peas "Pisum sativum" and beans "Vigna spp., Phaseolus spp.")	11.2%	0% - EPA	None	40
	Hs 070999 – Fresh or chilled vegetables n.e.s.	10.4%	0% - EPA	None	43
	Hs 071090 – Mixtures of vegetables, uncooked or cooked by steaming or by boiling in water, frozen	14.4%	0% - EPA	None	29
	HS 071310 – Dried, shelled peas "Pisum sativum", whether or not skinned or split: 10%	0%	0% - EPA	None	47
	HS 071331 – Dried, shelled beans of species (Vigna mungo; Hepper or Vigna radiata), whether or not skinned or split	0%	0% - EPA	None	31
	HS 071333 – Dried, shelled kidney beans "Phaseolus vulgaris", whether or not skinned or split:	0%	0% - EPA	None	35
	HS 071390 – Dried, shelled leguminous vegetables, whether or not skinned or split (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)	0%	0% - EPA	None	35
	HS 080440 –Fresh or dried avocados	4%	0% - EPA	None	41
	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	0%	0% - EPA	None	33

100. Trade remedies are applied as counter actions by an importing WTO member country in response to actions applied by a WTO exporting country such as subsidies, sales at less than fair value and import surges. The counter actions by the importing country take the form of countervailing duties due to subsidies, anti-dumping duties due to sales at less than fair value (dumping), and safeguards due to import surges; all which may threaten competitiveness and/or operations of domestic industries in the importing country.

COUNTRY	HS CODE AND PRODUCT DESCRIPTION	APPLIED CUSTOMS TARIFF RATE		Applied Trade Remedies[100]	Number of regulatory requirements
		MFN tariff rate	Preferential tariff rate on Kenyan originating vegetables and fruits		
United Kingdom	HS 070810 – Fresh or chilled peas (Pisum sativum), shelled or unshelled	8%	0% - EPA	None	0
	HS 070820 – Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled	10%	0% - EPA	None	0
	Hs 070890 – Fresh or chilled leguminous vegetables, shelled or unshelled (excl. peas "Pisum sativum" and beans "Vigna spp., Phaseolus spp.")	10%	0% - EPA	None	0
	Hs 070999 – Fresh or chilled vegetables n.e.s.	10%	0% - EPA	None	0
	Hs 071090 – Mixtures of vegetables, uncooked or cooked by steaming or by boiling in water, frozen	14%	0% - EPA	None	0
	HS 071310 – Dried, shelled peas "Pisum sativum", whether or not skinned or split: 10%	0%	0% - EPA	None	0
	HS 071331 – Dried, shelled beans of species (Vigna mungo; Hepper or Vigna radiata), whether or not skinned or split	0%	0% - EPA	None	0
	HS 071333 – Dried, shelled kidney beans "Phaseolus vulgaris", whether or not skinned or split:	0%	0% - EPA	None	0
	HS 071390 – Dried, shelled leguminous vegetables, whether or not skinned or split (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)	0%	0% - EPA	None	0
	HS 080440 –Fresh or dried avocados	4%	0% - EPA	None	0
	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	0%	0% - EPA	None	0
Uganda	HS 070810 – Fresh or chilled peas (Pisum sativum), shelled or unshelled	35%	0% – EAC CUP & CMP[101]	None	0
	HS 070820 – Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled	35%	0% – EAC CUP & CMP	None	0
	Hs 070890 – Fresh or chilled leguminous vegetables, shelled or unshelled (excl. peas "Pisum sativum" and beans "Vigna spp., Phaseolus spp.")	35%	0% – EAC CUP & CMP		0

101. EAC Customs Union Protocol (CUP) and Common Market Protocol (CMP) both provide for elimination of customs duties and other charges of equivalent on goods traded among EAC Partner States subject to compliance with the specified EAC rules of origin (ROO). It also provides for a Common External Tariff (CET) on goods imported from third countries into the EAC, and for elimination of non-tariff barriers (NTBs) on goods traded among the Partner States.

COUNTRY	HS CODE AND PRODUCT DESCRIPTION	APPLIED CUSTOMS TARIFF RATE		Applied Trade Remedies[100]	Number of regulatory requirements
		MFN tariff rate	Preferential tariff rate on Kenyan originating vegetables and fruits		
Uganda	Hs 070999 – Fresh or chilled vegetables n.e.s.	35%	0% – EAC CUP & CMP		0
	Hs 071090 – Mixtures of vegetables, uncooked or cooked by steaming or by boiling in water, frozen	35%	0% – EAC CUP & CMP		0
	HS 071310 – Dried, shelled peas "Pisum sativum", whether or not skinned or split: 10%	35%	0% – EAC CUP & CMP		0
	HS 071331 – Dried, shelled beans of species (Vigna mungo; Hepper or Vigna radiata), whether or not skinned or split	25%	0% – EAC CUP & CMP		0
	HS 071333 – Dried, shelled kidney beans "Phaseolus vulgaris", whether or not skinned or split:	35%	0% – EAC CUP & CMP		0
	HS 071390 – Dried, shelled leguminous vegetables, whether or not skinned or split (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)	25%	0% – EAC CUP & CMP		0
	HS 080440 –Fresh or dried avocados	35%	0% – EAC CUP & CMP		0
	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	35%	0% – EAC CUP & CMP		0
South Sudan	HS 070810 – Fresh or chilled peas (Pisum sativum), shelled or unshelled	5%	0% – EAC CUP & CMP		0
	HS 070820 – Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled	5%	0% – EAC CUP & CMP		0
	Hs 070890 – Fresh or chilled leguminous vegetables, shelled or unshelled (excl. peas "Pisum sativum" and beans "Vigna spp., Phaseolus spp.")	5%	0% – EAC CUP & CMP		0
	Hs 070999 – Fresh or chilled vegetables n.e.s.	5%	0% – EAC CUP & CMP		0
	Hs 071090 – Mixtures of vegetables, uncooked or cooked by steaming or by boiling in water, frozen	5%	0% – EAC CUP & CMP		0
	HS 071310 – Dried, shelled peas "Pisum sativum", whether or not skinned or split: 10%	5%	0% – EAC CUP & CMP		0
	HS 071331 – Dried, shelled beans of species (Vigna mungo; Hepper or Vigna radiata), whether or not skinned or split	5%	0% – EAC CUP & CMP		0

COUNTRY	HS CODE AND PRODUCT DESCRIPTION	APPLIED CUSTOMS TARIFF RATE		Applied Trade Remedies[100]	Number of regulatory requirements
		MFN tariff rate	Preferential tariff rate on Kenyan originating vegetables and fruits		
South Sudan	HS 071333 – Dried, shelled kidney beans "Phaseolus vulgaris", whether or not skinned or split:	5%	0% – EAC CUP & CMP		0
	HS 071390 – Dried, shelled leguminous vegetables, whether or not skinned or split (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)	5%	0% – EAC CUP & CMP		0
	HS 080440 –Fresh or dried avocados	5%	0% – EAC CUP & CMP		0
	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	5%	0% – EAC CUP & CMP		0
India	HS 070810 – Fresh or chilled peas (Pisum sativum), shelled or unshelled	30%	N.A.[102]	None	59
	HS 070820 – Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled	30%	N.A.	None	59
	Hs 070890 – Fresh or chilled leguminous vegetables, shelled or unshelled (excl. peas "Pisum sativum" and beans "Vigna spp., Phaseolus spp.")	30%	N.A.	None	59
	Hs 070999 – Fresh or chilled vegetables n.e.s.	30%	N.A.	None	52
	Hs 071090 – Mixtures of vegetables, uncooked or cooked by steaming or by boiling in water, frozen	30%	N.A.	None	44
	HS 071310 – Dried, shelled peas "Pisum sativum", whether or not skinned or split: 10%	10%	N.A.	None	58
	HS 071331 – Dried, shelled beans of species (Vigna mungo; Hepper or Vigna radiata), whether or not skinned or split	0%	N.A.	None	58
	HS 071333 – Dried, shelled kidney beans "Phaseolus vulgaris", whether or not skinned or split:	0%	N.A.	None	58
	HS 071390 – Dried, shelled leguminous vegetables, whether or not skinned or split (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)	0%	N.A.	None	58
	HS 080440 –Fresh or dried avocados	30%	N.A.	None	62
	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	30%	N.A.	None	77

102. Not Applicable since Kenya does not have a bilateral trade agreement with India

COUNTRY	HS CODE AND PRODUCT DESCRIPTION	APPLIED CUSTOMS TARIFF RATE		Applied Trade Remedies[100]	Number of regulatory requirements
		MFN tariff rate	Preferential tariff rate on Kenyan originating vegetables and fruits		
Pakistan	HS 070810 – Fresh or chilled peas (Pisum sativum), shelled or unshelled	3%	N.A.	N.A.	1
	HS 070820 – Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled	3%	N.A.	N.A.	1
	Hs 070890 – Fresh or chilled leguminous vegetables, shelled or unshelled (excl. peas "Pisum sativum" and beans "Vigna spp., Phaseolus spp.")	3%	N.A.	N.A.	1
	Hs 070999 – Fresh or chilled vegetables n.e.s.	3%	N.A.	N.A.	1
	Hs 071090 – Mixtures of vegetables, uncooked or cooked by steaming or by boiling in water, frozen	16%	N.A.	N.A.	0
	HS 071310 – Dried, shelled peas "Pisum sativum", whether or not skinned or split: 10%	3%	N.A.	N.A.	1
	HS 071331 – Dried, shelled beans of species (Vigna mungo; Hepper or Vigna radiata), whether or not skinned or split	3%	N.A.	N.A.	1
	HS 071333 – Dried, shelled kidney beans "Phaseolus vulgaris", whether or not skinned or split:	3%	N.A.	N.A.	0
	HS 071390 – Dried, shelled leguminous vegetables, whether or not skinned or split (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)	3%	N.A.	N.A.	1
	HS 080440 –Fresh or dried avocados	20%	N.A.	N.A.	1
	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	20%	N.A.	N.A.	2
U.A.E	HS 070810 – Fresh or chilled peas (Pisum sativum), shelled or unshelled	0%	N.A.	N.A.	107
	HS 070820 – Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled	0%	N.A.	N.A.	107
	Hs 070890 – Fresh or chilled leguminous vegetables, shelled or unshelled (excl. peas "Pisum sativum" and beans "Vigna spp., Phaseolus spp.")	0%	N.A.	N.A.	107
	Hs 070999 – Fresh or chilled vegetables n.e.s.	0%	N.A.	N.A.	107
	Hs 071090 – Mixtures of vegetables, uncooked or cooked by steaming or by boiling in water, frozen	5%	N.A.	N.A.	107
	HS 071310 – Dried, shelled peas "Pisum sativum", whether or not skinned or split: 10%	5%	N.A.	N.A.	107

COUNTRY	HS CODE AND PRODUCT DESCRIPTION	APPLIED CUSTOMS TARIFF RATE		Applied Trade Remedies[100]	Number of regulatory requirements
		MFN tariff rate	Preferential tariff rate on Kenyan originating vegetables and fruits		
U.A.E	HS 071331 – Dried, shelled beans of species (Vigna mungo; Hepper or Vigna radiata), whether or not skinned or split	0%	N.A.	N.A.	107
	HS 071333 – Dried, shelled kidney beans "Phaseolus vulgaris", whether or not skinned or split:	0%	N.A.	N.A.	107
	HS 071390 – Dried, shelled leguminous vegetables, whether or not skinned or split (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)	5%	N.A.	N.A.	107
	HS 080440 –Fresh or dried avocados	0%	N.A.	N.A.	109
	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	0%	N.A.	N.A.	108
Vietnam	HS 070810 – Fresh or chilled peas (Pisum sativum), shelled or unshelled	20%	N.A.		47
	N.A.		47		47
	HS 070820 – Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled	20%	N.A.		47
	Hs 070890 – Fresh or chilled leguminous vegetables, shelled or unshelled (excl. peas "Pisum sativum" and beans "Vigna spp., Phaseolus spp.")	20%	N.A.		47
	Hs 070999 – Fresh or chilled vegetables n.e.s.	13%	N.A.		47
	Hs 071090 – Mixtures of vegetables, uncooked or cooked by steaming or by boiling in water, frozen	17%	N.A.		46
	HS 071310 – Dried, shelled peas "Pisum sativum", whether or not skinned or split: 10%	0%	N.A.		56
	HS 071331 – Dried, shelled beans of species (Vigna mungo; Hepper or Vigna radiata), whether or not skinned or split	0%	N.A.		56
	HS 071333 – Dried, shelled kidney beans "Phaseolus vulgaris", whether or not skinned or split:	0%	N.A.		56
	HS 071390 – Dried, shelled leguminous vegetables, whether or not skinned or split (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)	0%	N.A.		56
	HS 080440 –Fresh or dried avocados	15%	N.A.		47
	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	25%	N.A.		46

COUNTRY	HS CODE AND PRODUCT DESCRIPTION	APPLIED CUSTOMS TARIFF RATE		Applied Trade Remedies[100]	Number of regulatory requirements
		MFN tariff rate	Preferential tariff rate on Kenyan originating vegetables and fruits		
Saudi Arabia	HS 070810 – Fresh or chilled peas (Pisum sativum), shelled or unshelled	0%	N.A.		88
	HS 070820 – Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled	0%	N.A.		88
	Hs 070890 – Fresh or chilled leguminous vegetables, shelled or unshelled (excl. peas "Pisum sativum" and beans "Vigna spp., Phaseolus spp.")	0%	N.A.		88
	Hs 070999 – Fresh or chilled vegetables n.e.s.	15%	N.A.		88
	Hs 071090 – Mixtures of vegetables, uncooked or cooked by steaming or by boiling in water, frozen	5%	N.A.		88
	HS 071310 – Dried, shelled peas "Pisum sativum", whether or not skinned or split: 10%	5%	N.A.		88
	HS 071331 – Dried, shelled beans of species (Vigna mungo; Hepper or Vigna radiata), whether or not skinned or split	0%	N.A.		90
	HS 071333 – Dried, shelled kidney beans "Phaseolus vulgaris", whether or not skinned or split:	0%	N.A.		90
	HS 071390 – Dried, shelled leguminous vegetables, whether or not skinned or split (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)	5%	N.A.		88
	HS 080440 –Fresh or dried avocados	0%	N.A.		92
	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	0%	N.A.		91
Ethiopia[103]	HS 070810 – Fresh or chilled peas (Pisum sativum), shelled or unshelled	30%	27%		4
	HS 070820 – Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled	30%	27%		4
	Hs 070890 – Fresh or chilled leguminous vegetables, shelled or unshelled (excl. peas "Pisum sativum" and beans "Vigna spp., Phaseolus spp.")	30%	27%		4
	Hs 070999 – Fresh or chilled vegetables n.e.s.	30%	27%		4

103. Ethiopia has been used as an example to demonstrate provisions governing Kenyan vegetables and fruits exports to COMESA countries preferential tariffs, which are lower than MFN tariffs.

COUNTRY	HS CODE AND PRODUCT DESCRIPTION	APPLIED CUSTOMS TARIFF RATE		Applied Trade Remedies[100]	Number of regulatory requirements
		MFN tariff rate	Preferential tariff rate on Kenyan originating vegetables and fruits		
Ethiopia[103]	Hs 071090 – Mixtures of vegetables, uncooked or cooked by steaming or by boiling in water, frozen	30%	27%		4
	HS 071310 – Dried, shelled peas "Pisum sativum", whether or not skinned or split: 10%	30%	27%		16
	HS 071331 – Dried, shelled beans of species (Vigna mungo; Hepper or Vigna radiata), whether or not skinned or split	30%	27%		8
	HS 071333 – Dried, shelled kidney beans "Phaseolus vulgaris", whether or not skinned or split:	30%	27%		4
	HS 071390 – Dried, shelled leguminous vegetables, whether or not skinned or split (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)	30%	27%		4
	HS 080440 –Fresh or dried avocados	30%	27%		10
	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	30%	27%		8
Nigeria[104]	HS 070810 – Fresh or chilled peas (Pisum sativum), shelled or unshelled	20%			16
	HS 070820 – Fresh or chilled beans "Vigna spp., Phaseolus spp.", shelled or unshelled	20%			16
	Hs 070890 – Fresh or chilled leguminous vegetables, shelled or unshelled (excl. peas "Pisum sativum" and beans "Vigna spp., Phaseolus spp.")	20%			16
	Hs 070999 – Fresh or chilled vegetables n.e.s.	20%			16
	Hs 071090 – Mixtures of vegetables, uncooked or cooked by steaming or by boiling in water, frozen	20%			16
	HS 071310 – Dried, shelled peas "Pisum sativum", whether or not skinned or split: 10%	5%			16
	HS 071331 – Dried, shelled beans of species (Vigna mungo; Hepper or Vigna radiata), whether or not skinned or split	5%			16
	HS 071333 – Dried, shelled kidney beans "Phaseolus vulgaris", whether or not skinned or split:	5%			16
	HS 071390 – Dried, shelled leguminous vegetables, whether or not skinned or split (excl. peas, chickpeas, beans, lentils, broad beans, horse beans and pigeon peas)	20%			16
	HS 080440 –Fresh or dried avocados	20%			16
	HS 080450 – Fresh or dried guavas, mangoes and mangosteens	20%			16

Source: https://www.macmap.org/en//query/results?reporter=699&partner=404&product=070810&level=6

104. Nigeria has been used as an example to demonstrate provisions governing Kenyan vegetables and fruits exports to AU countries under the AfCFTA framework

Annex 19: India: Applicable Regulatory Requirements on fresh vegetables HS 070810 (Fresh or chilled peas (Pisum sativum), shelled or unshelled) (as at Dec 2023)

India applies a total of 59 regulatory requirements on imported fresh vegetables and fruits categorised under HS 07 and HS 08 which emerge as priority export products for Kenya (https://www.macmap.org/en//query/results), as elaborated below

1. A140 - Special Authorization requirement for SPS reasons.

There are 4 measures under this regulation which require that importers should receive an authorization, permit or approval from a relevant government agency of the origin. In order to obtain the authorization, Indian importers may need to comply with other related regulations and conformity assessments. For example, an import authorization from the Ministry of Health is required. The 4 import measures are:

1. **Import authorization requirements specified in the Plant Quarantine Order (Regulation of Import into India), 2003 amended in Mar 2016.** The import of plants and plant products are subject to a permit requirement, an SPS certification requirement, and inspection by an authorized officer. Consignments of plants and plant products may only be imported through specified ports of entry. Plant species in the order are also subject to geographical restrictions.
2. **Imports authorization requirements specified in the Plant Quarantine Order (Regulation of Import into India), 2003 amended in November 2019:** The import of plants and plant products are subject to a permit requirement, an SPS certification requirement, and inspection by an authorized officer. Consignments of plants and plant products may only be imported through ports of entry specified and are subject to geographical restrictions.
3. **Import, export, transport, manufacture, process, use or sale of any hazardous microorganisms of genetically engineered organisms/substances or cells.** As specified in the "Manufacture, use, import, export and storage of hazardous microorganisms genetically engineered organisms or cells Rules, 1989", no person is allowed to import, export, transport, manufacture or sell any hazardous microorganisms of genetically engineered organisms except with the approval of the Genetic Engineering Approval Committee. Food stuffs, ingredients in food stuffs and additives containing genetically engineered organisms or cells, should not be produced, sold, imported or used except with the approval of the Genetic Engineering Approval Committee.
4. **Manufacture, import, sale, stocking, exhibition or distribution of articles of food which has been subjected to the treatment of irradiation.** The Department of Atomic Energy. Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011 specifies that all food business operators including importers of food items must register with the designated Food Safety Officer. Food businesses require a licence, while raw materials used in the production of food should be free from parasites, pesticides, toxic items, etc. Packaging materials may not contaminate or damage food items and must accommodate labelling requirements from the Food Safety and Standards Act. Food businesses must conform to sanitary and hygienic requirements and food safety measures. No person shall manufacture, import, or sell any article of food which has been subjected to the treatment of irradiation, except under a licence.

2. A150 - Registration requirements for importers.

There are 2 measures under this regulation, requiring importers should be registered before they can import certain products. To register, importers may need to comply with certain requirements, provide documentation and pay registration fees. For example, importers of certain food items need to be registered with the Ministry of Health. The 2 import measures are:

1. **Food Safety and Standards (Food Import) Regulations, 2016:** This legislation requires that an Indian food importer has to acquire an FBO license for import of any food items, register with the Directorate General of Foreign Trade (DGFT), and possess a valid Import-Export Code. No person is allowed to import any food without a valid import license, and no food article should be cleared from customs unless it has a 60% shelf life. Food imports are subject to marking, certification, inspection and testing

requirements. Food importers are required to pay the prescribed fees for scrutiny of documents, visual inspection and drawing of samples. Consignments have to be packed in such a manner to facilitate inspection and collection of samples. Also, each imported food consignment has to be stored in a manner that prevents contact with other foods. Fees are payable for lab analysis to the Food Authority, and importers are required to submit a recall plan to facilitate the traceability of their products in case of rejection through the lab analysis.

2. **Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011.** This regulation requires that any manufacturer, importer, and distributor of food items shall buy and sell food products only from, or to, licensed and registered vendors and maintain necessary records of their transactions. All food business operators including importers of food items must register with the designated Food Safety Officer and acquire the necessary licence. Raw materials used in the production of food should be free from parasites, pesticides, toxic items, etc. Packaging materials used should not contaminate or damage food items and must accommodate labelling requirements as specified in the Food Safety and Standards Act. Food businesses must also conform to sanitary and hygienic requirements and food safety measures. Also, no person is allowed to manufacture, import, or sell any food item which has been subjected to treatment through irradiation, except under a licence.

3. A210 - Tolerance limits for residues of or contamination by certain non-microbiological) substances.

This regulation is broken down into 6 measures which establish a maximum residue limit (MRL) or ""tolerance limit"" on substances such as fertilisers, pesticides, and certain chemicals and metals used during production of food and feed but which are not the intended ingredients. The MRLs includes a permissible maximum level (ML) for non-microbiological contaminants. Examples include: a) MRL for insecticides, pesticides, heavy metals, veterinary drug residues, b) Persistent Organic Pollutants (POPs), which are toxic chemicals that adversely affect human health and the environment, and POPs and chemicals generated during processing of food and feed; and c) residues of ""dithianon"" in apples and hop. The 6 sub-regulations are:

1. **Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011:** This regulation lists tolerance limits for metal contaminants, pesticides, naturally occurring toxic substances and antibiotics for a wide variety of food products. It provides that chemicals described in monographs of the Indian Pharmacopoeia when used in foods, shall not contain metal contaminants beyond the limits specified in the appropriate monographs of the Indian Pharmacopoeia.
2. **The Prevention of Food Adulteration Rules, 1955:** This regulation which is enforced by the Central Committee for Food Standards provides that food articles are subject to tolerance limits of poisonous metals, anti-oxidants, antibiotics, insecticides and pesticides, etc. it requires that the use of colourants, preservatives, and artificial sweeteners in food is restricted, and that only those prescribed inorganic colouring matter may be added to food articles. Every package shall carry a label specifying the name or description of food contained in the package and the names of ingredients used in the product. Additional labelling requirements apply including quality requirements regarding product shape, colour, moisture content, ash content, acid value etc.
3. **Food Safety and Standards (Contaminants, Toxins and Residues) (Amendment) Regulation, 2016:** This regulation is implemented by the Food Safety and Standards Authority of India and requires that food products are subject to maximum levels of Melamine.
4. **Food Safety and Standards (Prohibition and Restrictions on sales) Regulations, 2011.** This regulation is implemented by the Food Safety and Standards Authority of India, and requires that specified food products are subject to tolerance limits, hygienic practices, packaging requirements and labelling requirements.
5. **Pulses Grading and Marking Rules, 2003.** This regulation is implemented by the Ministry of Agriculture, and requires that pulses must bear a grade designation as well as information regarding the packer, net weight, best before date, etc. The products must also be packed in containers made from specified materials and free from any insect infestation or other contamination. Product-specific quality requirements include product quality, absence of contaminants and use of colouring matter.

6. **Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011.** This regulation is implemented by the Food Safety and Standards Authority of India, and requires that all food business operators including importers of food items must register with the designated Food Safety Officer. Raw materials used in the production of food should be free from parasites, pesticides, toxic items, etc. Packaging materials used must not contaminate or damage food items and must accommodate labelling requirements specified in the Food Safety and Standards Act. Food businesses must conform to sanitary and hygienic requirements and food safety measures. Also no person shall manufacture, import, or sell any article of food which has been subjected to irradiation treatment, except under a licence.

4. A220 - Restricted use of certain substances in foods and feeds and their contact materials.

There are 4 measures under this regulation, which provide restriction or prohibition on the use of certain substances contained in food and feed. They include restrictions on substances contained in the food-containers that might migrate to food. Examples include: a) Restrictions for food and feed additives used for colouring, preservation or sweeteners. b) Restrictions that food containers made of polyvinyl chloride plastic, vinyl chloride monomer must not exceed 1 mg per kg. The 4 measures are:

1. **Food Safety and Standards (Food Products Standards and Food Additives) Amendment Regulations, 2016.** This regulation is implemented by the Food Safety and Standards Authority of India and requires that proprietary food products shall comply with prescribed the food additives and microbiological specifications.
2. **Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.** This regulation which is implemented by the Food Safety and Standards Authority of India sets rules and requirements for the contents of dairy products, infant nutrition foods, dairy based desserts and confectionaries, oils and fats, atta, maida, and bread. Only permitted additives, flavours and colouring substances may be found in food items. Fruits and vegetables, spices, dairy products, fish and meat products are also subject to microbiological requirements.
3. **Food Safety and Standards (Food Products Standards and Food Additives) Amendment Regulation, 2015.** This regulation is implemented by the Food Safety and Standards Authority of India and requires that Steviol Glycoside may be used only in specified food articles and in quantities not exceeding specified limits.
4. **The Prevention of Food Adulteration Rules, 1955.** This regulation is implemented by the Central Committee for Food Standards and provides that food articles are subject to tolerance limits concerning poisonous metals, anti-oxidants, antibiotics, insecticides, pesticides, etc. The use of colourants, preservatives, and artificial sweeteners in food is restricted, and only those specified inorganic colouring matter may be added to food articles. Every package must have a label specifying the name or description of food contained in the package and the names of ingredients used in the product. Additional labelling requirements also apply such as quality requirements regarding product shape, colour, moisture content, ash content, acid value etc.

5. A820 - Testing requirements.

This regulation sets 2 measures for testing of food products against given regulations such as MRLs, including sampling requirements. The two measures are:

1. **Food Safety and Standards (Food Import) Regulations, 2016.** This regulation is implemented by the Food Safety and Standards Authority of India, and requires that no person shall import any food without an import license. No food article shall be cleared from customs unless it has 60% shelf life. Imports are subject to marking, certification, inspection and testing requirements. Food importers shall pay the prescribed fees for scrutiny of documents, visual inspection and drawing of samples. Consignments shall be packed in such a manner to facilitate inspection and collection of samples. Foods shall be stored in a manner that prevents contact with other foods. Also fees are payable for lab analysis to the Food Authority, and food importers are required to submit a recall plan to ensure traceability of their products in case of failed lab analysis results.

2. **Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011.** This regulation is implemented by the Food Safety and Standards Authority of India, and requires that any imported food article shall be sent to laboratories notified by the Food Authority of India for sampled analysis and issuance of a certificate.

6. A310 – Labelling requirements.

Regulations on labelling of packages for food items are contained in five (5) measures which define information directly related to food safety which should be provided to the consumers through the product label. Labelling in the regulation is defined as any written, electronic, or graphic communication on the consumer packaging or on a separate but associated label. Examples include: a) Labels that must specify the storage conditions such as "5 degree C maximum"; and b) potentially dangerous ingredients such as allergens, e.g. "contains honey not suitable for children under one year of age". The 5 measures are:

1. **The Prevention of Food Adulteration Rules, 1955.** This measure is implemented by the Central Committee for Food Standards, and provides that every package of food items shall carry a label specifying the month and year in capital letters up to which the product is best for consumption. The use of any colorants in food must be clearly labelled in prescribed size dimensions. Also, every package should have a label specifying the name or description of food contained in the package and the names of ingredients used in the product. Additional labelling requirements include quality requirements regarding product shape, colour, moisture content, ash content, acid value etc. Information on the package for all food articles which are subject to tolerance limits must be indicate the tolerance on poisonous metals, anti-oxidants, antibiotics, insecticides, pesticides, etc.
2. **Food Safety and Standards (Packaging and Labelling) Regulations, 2011.** These regulations are implemented by the Food Safety and Standards Authority of India, and contain rules for labelling and packaging requirements for packaged food items. Plastic and aluminium containers should conform to specified standards, and must be securely packed and sealed. The label should state information such as nutritional facts, net quantity, date, month and year in which the commodity was manufactured, whether the product has non-vegetarian ingredients, food additives present, name and address of the manufacturer/importer, best before and use by date etc.
3. **Food Safety and Standards (Packaging and Labelling) Amendment Regulations, 2013.** This regulation is implemented by the Food Safety and Standards Authority (FSSA) of India and requires that pre-packaged foods shall be labelled with a FSSAI licence number displayed on the principal display panel in the prescribed format.
4. **Pulses Grading and Marking Rules, 2003.** This measure is implemented by the Ministry of Agriculture, and requires that pulses must bear a grade designation as well as information regarding the packer, net weight, best before date, etc. The product is subject to packing requirements such as being packed in a container made from specified materials and free from any insect infestation or other contamination. Product-specific quality requirements include product quality, absence of contaminants and use of colouring matter.
5. **Food Safety and Standards (Packaging and Labelling) Second Amendment Regulations, 2013.** This measures which is implemented by the Food Safety and Standards Authority of India requires that edible fats, oils and processed and packaged foods with declared shelf-life must declare total fat content and total saturated fat content.

7. A330 - Packaging requirements.

Five (5) measures are applied under this regulation, which regulate the mode in which goods must be or cannot be packed, and the definition of packaging materials to be used which are directly related to food safety. An example is that the use of PVC films for food packaging is restricted. The 5 measures are:

1. **Food Safety and Standards (Packaging and Labelling) Regulations, 2011.** This measures which is implemented by the Food Safety and Standards Authority of India contains rules for labelling and packaging requirements for packaged food items. Plastic and aluminium containers should conform to certain standards and must be securely packed and sealed. The label should state information such as nutritional facts, net quantity,

date, month and year in which the commodity was manufactured, whether the product has non-vegetarian ingredients, food additives present, name and address of the manufacturer/ importer, best before and use by date etc.

2. **The Fruit Products Order, 1955.** This measure which is implemented by the Ministry of Food Processing Industries requires that canned fruits and vegetables are subject to packaging requirements including a specification that the head space of the container cannot be more than 1.6 centimetres. Containers should be labelled with the licence number of the manufacturer, date of manufacture, nature of the product, etc.; while the drained weight or fruit should not be less than 50% of the total contents. Fruit products must conform to the specified standards of quality and composition, while. Aspartame and Aceflume, synthetic flavouring and preservatives are subject to maximum concentrations.
3. **The Prevention of Food Adulteration Rules, 1955.** This measure is implemented by the Central Committee for Food Standards, and requires that food articles are subject to tolerance limits concerning poisonous metals, anti-oxidants, antibiotics, insecticides, pesticides, etc. The use of colourants, preservatives, and artificial sweeteners in food is restricted; and only specified inorganic colouring matter may be added to food articles. Every package shall carry a label specifying the name or description of food contained in the package and the names of ingredients used in the product. Additional labelling requirements include quality requirements regarding product shape, colour, moisture content, ash content, acid value etc.
4. **Pulses Grading and Marking Rules, 2003.** This measure is implemented by the Ministry of Agriculture, and requires that pulses must bear a grade designation as well as information regarding the packer, net weight, best before date, etc. The product is subject to packing requirements such as being packed in a container made from specified materials and free from any insect infestation or other contamination. Product-specific quality requirements include product quality, absence of contaminants and use of colouring matter.
5. **Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011.** This measure is implemented by the Food Safety and Standards Authority of India, and requires that all food business operators including importers of food items must register with the designated Food Safety Officer. Raw materials used in the production of food should be free from parasites, pesticides, toxic items, etc. Packaging material may not contaminate or damage food items and must accommodate labelling requirements specified in the Food Safety and Standards Act. Food businesses must conform to sanitary and hygienic requirements and food safety measures; while no person shall manufacture, import, or sell any article of food which has been subjected to the irradiation treatment, except under a licence.

8. A410 - Microbiological criteria of the final product

Two (2) measures are applied under this regulation, which define the microorganisms of concern and/or their toxins/metabolites and the reason for that concern, and the analytical methods for their detection and/or quantification in the final product. The regulation requires that microbiological limits should take into consideration the risk associated with the microorganisms, and the conditions under which the food is expected to be handled and consumed. Microbiological limits should also take account of the likelihood of uneven distribution of microorganisms in the food and the inherent variability of the analytical procedure. Examples include: Liquid eggs should be pasteurized or otherwise treated to destroy all viable Salmonella microorganisms. The 2 measures are:

1. **Food Safety and Standards (Food Products Standards and Food Additives) Amendment Regulations, 2016.** This measures which is implemented by the Food Safety and Standards Authority of India requires that proprietary food products should comply with prescribed food additives provisions and microbiological specifications.
2. **Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.** This measure is implemented by the Food Safety and Standards Authority of India and sets identity requirements for the contents of dairy products, infant nutrition foods, dairy based desserts and confectionaries, oils and fats, atta, maida, and bread; including permitted additives, flavours and colouring substances. Also, fruits and vegetables products and spices are subject to microbiological requirements.

9. A420 - Hygienic practices during production.

This regulation contains requirements principally intended to give guidance on the establishment and application of microbiological criteria for foods at any point in the food chain from primary production to final consumption: The safety of foods assured by control at the source, product design and process control, and the application of Good Hygienic Practices during production, processing (including labelling), handling, distribution, storage, sale, preparation and use. Specifically, the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011 which is implemented by the Food Safety and Standards Authority of India requires that food business operators including importers of food items must register with the designated Food Safety Officer; and that raw materials used in the production of food should be free from parasites, pesticides, toxic items, etc. Packaging materials should not contaminate or damage food items and must accommodate labelling requirements specified in the Food Safety and Standards Act. Food businesses must conform to sanitary and hygienic requirements and food safety measures; while no person is allowed to manufacture, import, or sell any article of food which has been subjected to irradiation treatment without a licence.

10. A520 – Irradiation:

Two (2) measures are applied under this regulation, with the requirement to kill or devitalize microorganisms, bacteria, viruses, or insects that might be present in food and feed products by using irradiated energy (ionizing radiation). This technology may be applied on meat products, fresh fruits, spices, and dried vegetable seasonings. The 2 measures are:

1. **The Prevention of Food Adulteration Rules, 1955.** This measure is implemented by the Central Committee for Food Standards, and requires that food articles are subject to tolerance limits concerning poisonous metals, anti-oxidants, antibiotics, insecticides, pesticides, etc. The use of colourants, preservatives, and artificial sweeteners in food is restricted. Only prescribed inorganic colouring matter may be added to food articles; while every package shall carry a label specifying the name or description of food contained in the package and the names of ingredients used in the product. Additional labelling requirements include quality requirements regarding product shape, colour, moisture content, ash content, acid value etc.
2. **Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.** This measure is implemented by the Food Safety and Standards Authority of India and sets identity requirements for the contents of dairy products, infant nutrition foods, dairy based desserts and confectionaries, oils and fats, Atta, Maida, and bread. Foods should be free of specified colorants, preservatives, flavours, chemicals or other components such as starch, added antioxidants, trans-fatty acids etc. fruits and vegetables products, spices, dairy products, fish and meat products are subject to microbiological requirements.

11. A640 - Storage and transport conditions.

Two (2) measures are applied under this regulation, with the requirement to kill or devitalize microorganisms, bacteria, viruses, or insects that might be present in food and feed products by using irradiated energy (ionizing radiation). This technology may be applied on meat products, fresh fruits, spices, and dried vegetable seasonings. The 2 measures are:

1. **Food Safety and Standards (Food Import) Regulations, 2016.** The measure which is implemented by the Food Safety and Standards Authority of India requires that no person shall import any food without an import license; and that no food article shall be cleared from customs unless it has 60% shelf life. A clearance application must include prescribed documents; while imports are subject to marking, certification, inspection and testing requirements. Food importers must pay the prescribed fees for scrutiny of documents, visual inspection and drawing of samples. Consignments shall be packed in a manner that facilitates inspection and collection of samples; and foods shall be stored in a manner that prevents contact with other foods. Fees are payable for lab analysis to the Food Authority, and importers should submit a recall plan to ensure traceability of their products in case lab analysis results fail to proof safety.
2. **Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011.** The measure is implemented by the Food Safety and Standards Authority of India and requires that all food business operators including importers of food items must register with the designated Food Safety Officer. Raw materials used in the production of food should be free from

parasites, pesticides, toxic items, etc. Packaging material may not contaminate or damage food items and must accommodate labelling requirements specified in the Food Safety and Standards Act. Food businesses must conform to sanitary and hygienic requirements and food safety measures; and no person shall manufacture, import, or sell any article of food which has been subjected to irradiation treatment without a licence.

12. A690 - Other requirements on production or post-production processes, not elsewhere specified.

This regulation specifies that no food article shall be allowed to be cleared from the custom area unless it has a 60% shelf life. Specifically, as provided by the Food Safety and Standards (Food Import) Regulations, 2016 implemented by the Food Safety and Standards Authority of India, no person shall import any food without an import license, and no food article shall be cleared from customs unless it has 60% shelf life. Imports are subject to marking, certification, inspection and testing requirements; and food importers shall pay the prescribed fees for scrutiny of documents, visual inspection and drawing of samples. Consignments shall be packed in a manner that facilitates inspection and collection of samples; while foods shall be stored in a manner that prevents contact with other foods. Importers shall submit a recall plan that assures traceability of their products in case lab analysis results fail to provide safety to consumers.

13. A830 - Certification requirements.

The regulation has 4 measures which provides that certification of conformity with a given regulation may be issued in the exporting or the importing country. An example is that a certificate of conformity for materials that come into contact with food (containers, papers, plastics, etc.) is required. The 4 measures are:

1. **Food Safety and Standards (Food Import) Regulations. 2016.** This measure is implemented by the Food Safety and Standards Authority of India and provides that an imports clearance application must include a Certificate of Country of Origin, a Declaration on Regulatory status of food in the country of origin, and free sale certificate. It further requires that no person shall import any food without an import license and that no food article shall be cleared from customs unless it has 60% shelf life. A clearance application must include prescribed documents; and imports are subject to marking, certification, inspection and testing requirements. Food importers shall pay the prescribed fees for scrutiny of documents, visual inspection and drawing of samples. Consignments shall be packed in a manner that facilitates inspection and collection of samples. Foods shall be stored in a manner that prevents contact with other foods; and fees are payable for lab analysis to the Food Authority. Importers shall submit a recall plan that assures traceability of their products in case lab analysis results fail to provide safety to consumers.
2. **Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011.** This measure is implemented by the Food Safety and Standards Authority of India and requires that any imported foods must be sent to laboratories notified by the Food Authority of India for sampled analysis and issuance of a certificate.
3. **Plant Quarantine Order (Regulation of Import into India), 2003 as amended in Mar 2016.** This measure is implemented by the Ministry of Agriculture, Department of Agriculture and Cooperation, Directorate of Plant Protection, Quarantine and Storage. It provides that imports of plants and plant products must be accompanied by an original copy of the Phytosanitary Certificate issued by the country of origin, an import permit, and an inspection certificate issued by an authorized officer. Consignments of plants and plant products are only imported through prescribed ports of entry; while some prescribed plant species are subject to geographical restrictions.
4. **Plant Quarantine Order (Regulation of Import into India), 2003 as amended in November 2019.** This measure is implemented by the Ministry of Agriculture, Department of Agriculture and Cooperation, Directorate of Plant Protection, Quarantine and Storage. It requires that imports of plants and plant products must be accompanied by an original copy of the Phytosanitary Certificate issued by the country of origin, an import permit, and an inspection certificate issued by an authorized officer. Consignments of plants and plant products are only imported through prescribed ports of entry; while some prescribed plant species are subject to geographical restrictions.

14. A840 - Inspection requirements.

This regulation has 3 measures which requires that inspection on imported products foods may be performed by public or private entities. It is similar to testing, but it does not include laboratory testing. An example is that animals or plant parts must be inspected before entry is allowed. The 3 measures are:

1. **Food Safety and Standards (Food Import) Regulations, 2016.** This measure is implemented by the Food Safety and Standards Authority of India, and provides that no person shall import any food without an import license, and no food article shall be cleared from customs unless it has 60% shelf life. A clearance application must include prescribed documents, and imports are subject to marking, certification, inspection and testing requirements. Food importers shall pay prescribed fees to the Food Authority for scrutiny of documents, visual inspection and drawing of samples. Foods shall be stored in a manner that prevents contact with other foods; and importers shall submit a recall plan that assures traceability of their products in case lab analysis results fail to provide safety to consumers.
2. **Plant Quarantine Order (Regulation of Import into India), 2003 as amended in Nov 2019.** This Order is implemented by the Ministry of Agriculture, Department of Agriculture and Cooperation, Directorate of Plant Protection, Quarantine and Storage. It subjects the import of plants and plant products to a permit requirement, an SPS certification requirement, and inspection before import by an authorized officer. Consignments of plants and plant products may only be imported through specified ports of entry; while prescribed plant species are subject to geographical restrictions.
3. **Plant Quarantine Order (Regulation of Import into India), 2003 as amended in Mar 2016.** This order is implemented by the Ministry of Agriculture, Department of Agriculture and Cooperation, Directorate of Plant Protection, Quarantine and Storage. It specifies that imports of plants and plant products must be accompanied by an original copy of the Phytosanitary Certificate issued by the country of origin, an import permit, and an inspection certificate issued by an authorized officer. Consignments of plants and plant products may only be imported through prescribed ports of entry and prescribed plant species are subject to geographical restrictions. Additional SPS certification declarations and special conditions apply to prescribed products.

15. A853 - Distribution and location of products after delivery

The regulation is implemented by the Food Safety and Standards Authority of India, and contains requirements for disclosure of information on when and how the goods are distributed from the time of their delivery to distributors until they reach the final consumer. It requires all importers to submit a recall plan describing the detail of contingency plan that ensures the traceability of the products in case of any eventuality of risk associated with the food consignments. It is specifically implemented through the Food Safety and Standards (Food Import) Regulations, 2016, which provides that no person shall import any food without an import license, and that no food article shall be cleared from customs unless it has 60% shelf life. A clearance application must include prescribed documents. Imports are subject to marking, certification, inspection and testing requirements; while food importers shall pay the prescribed fees for scrutiny of documents, visual inspection and drawing of samples the Food Authority. Consignments shall be packed in such a manner that it facilitates inspection and collection of samples; and foods shall be stored in a manner that prevents contact with other foods.

16. A859 - Traceability requirements, not elsewhere specified.

These requirements provide that an import clearance application must include prescribed documents, including an End Use Declaration, a Laboratory Analysis Report from an authorised laboratory in the country of origin, etc. They are implemented by the Food Safety and Standards Authority of India, and are specified in the Food Safety and Standards (Food Import) Regulations, 2016, which specifies that no person shall import any food without an import license, and no food article shall be cleared from customs unless it has 60% shelf life. A clearance application must include prescribed documents. Imports are subject to marking, certification, inspection and testing requirements; while food importers shall pay the prescribed fees for scrutiny of documents, visual inspection and drawing of samples the Food Authority. Consignments shall be packed in such a manner that it facilitates inspection and collection of samples; and foods shall be stored in a manner that prevents contact with other foods. Importers must submit a recall plan describing the detail of contingency plan that ensures the traceability of the products in case of any eventuality of risk associated with the food consignments.

17. B310 - Labelling requirements.

This regulation contains 4 measures for regulating the kind, colour and size of printing on packages and labels, and for defining the information that should be provided to the consumer. The label may include requirements on the official language to be used as well as technical information on the product. The 4 measures are:

1. **Legal Metrology (Packaged Commodities) Rules, 2011.** This measure is implemented by the Ministry of Consumer Affairs, Food & Public Distribution, and requires that all packaged commodities must bear a label with the name and address of the manufacturer or importer, the common or generic names of the commodity, the net quantity and the month and the year it is packed. Quantities must be given in metric values. Specifically, every firm which pre-packs or imports any commodity for sale shall register its name and complete address with the appointed authority. Listed commodities must be packed in standard quantities by weight, measure or number.
2. **The Prevention of Food Adulteration Rules, 1955.** This measure is implemented by the Central Committee for Food Standards. It requires that every package of food shall carry a label specifying the name, trade name or description of food contained in the package; the names of ingredients used in the product in descending order of their composition by weight or volume. Additional labelling requirements/restrictions include that food articles are subject to tolerance limits concerning poisonous metals, anti-oxidants, antibiotics, insecticides, pesticides, etc.; and that the use of colourants, preservatives, and artificial sweeteners in food is restricted. Also, prescribed foods must specify the quality requirements regarding product shape, colour, moisture content, ash content, acid value etc.
3. **General Grading and Marking Rules, 1988.** This measure is implemented by the Ministry of Agriculture, Department of Rural Development, and Directorate of Marketing & Inspection. It specifies the manner in which some agricultural products which have been graded according to their quality must be labelled. The Agmark labels must contain the name of the commodity, prescribed insignia, serial number, series, approving authority etc.
4. **Pulses Grading and Marking Rules, 2003.** This measure is implemented by the Ministry of Agriculture, and specifies that pulses must bear a grade designation as well as information regarding the packer, net weight, best before date, etc. The product is subject to packing requirements such as being packed in a container made from specified materials and free from any insect infestation or other contamination. Product-specific quality requirements include product quality, absence of contaminants and use of colouring matter.

18. B320 - Marking requirements

This regulation is implemented through the Food Safety and Standards (Food Import) Regulations, 2016 by the Food Safety and Standards Authority of India. It contains measures defining the information for transport and customs that should accompany the transport/distribution and packaging of goods: Imported food consignments must carry information on name and address of the importer, FSSAI Logo, License Number, and Non-Veg/Veg Logo. Typical signs such as "FRAGILE" or "THIS SIDE UP" etc. must be marked on the transport container."

19. B330 - Packaging requirements.

4 measures apply, which regulate the mode in which goods must be or cannot be packed, and which define the packaging materials to be used. An example is that palletized containers or special packages need to be used for the protection of sensitive or fragile products. The 4 measures are:

1. **Food Safety and Standards (Food Import) Regulations, 2016.** This measure is implemented by the Food Safety and Standards Authority of India. It requires that every food consignment imported into India must be packed in containers that facilitate the inspection and collection of samples from the consignment. Importers must submit a recall plan describing the detail of contingency plan that ensures the traceability of the products in case of any eventuality of risk associated with the food consignments.
2. **Pulses Grading and Marking Rules, 2003.** This measure is implemented by the Ministry of Agriculture, and specifies that imported pulses must bear a grade designation as well as information regarding the packer, net weight, best before date, etc. The product is subject to packing requirements such as being packed in a container made from specified materials and free from any insect infestation or other contamination. Product-specific quality requirements include product quality, absence of contaminants and use of colouring matter.
3. **Legal Metrology (Packaged Commodities) Rules, 2011.** This measure is implemented by the Ministry of Consumer Affairs, Food & Public Distribution. It provides that every firm which pre-packs or imports any commodity for sale shall register its name and complete address with the appointed authority. All packaged commodities must bear a label with the name and address of the manufacturer or importer, the common or generic names of the commodity, the net quantity and the month and the year it is packed. Quantities must be given in metric values. Listed commodities must be packed in standard quantities by weight, measure or number.
4. **The Fruit Products Order, 1955.** This measure is implemented by the Ministry of Food Processing Industries. It requires that vegetable products can be packed in aseptic and flexible packaging material which should conform to specifications of the Bureau of Indian Standards. Specifically, canned fruits and vegetables are subject to packaging requirements including a specification that the head space of the container cannot be more than 1.6 centimetres. Containers shall be labelled with the licence number of the manufacturer, date of manufacture, nature of the product, etc. The drained weight or fruit shall not be less than 50% of the total contents. Fruit products must conform to specified standards of quality and composition. Aspartame and Aceflume, synthetic flavouring and preservatives are subject to maximum concentrations.

20. B600 - Product identity requirement.

This measure is implemented through the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 by the Food Safety and Standards Authority of India. It defines conditions to be satisfied in order to identify a product with a certain denomination (including biological or organic labels). It provides microbiological requirements for fruits and vegetables products and spices, and rules for identifying the contents of dairy products, infant nutrition foods, dairy based desserts and confectionaries, oils and fats, Atta, Maida, and bread. Only permitted additives, flavours and colouring substances may are allowed in food items.

21. B700 - Product quality or performance requirement

2 measures apply under this regulation, which define conditions to be satisfied in terms of performance of the product (e.g. durability, hardness) or quality (e.g. content of defined ingredients). The 2 measures are:

1. **The Prevention of Food Adulteration Rules, 1955.** This measure is implemented by the Central Committee for Food Standards. It requires that dry fruits and nuts should not contain more than 5% of insect-damaged fruits and nuts, while fresh fruit and vegetables shall be free from rotting and free from coating of waxes, mineral oil and colours. Milk is subject to minimum levels of milk fat and non-fat solids, while infant food is subject to a large set of content requirements. Prescribed food products are subject to quality requirements regarding the product shape, colour, moisture content, ash content, acid value etc.; and to tolerance limits concerning poisonous metals, anti-oxidants,

antibiotics, insecticides, pesticides, etc. Every package shall carry a label specifying the name or description of food contained in the package and the names of ingredients used in the product.

2. **Pulses Grading and Marking Rules, 2003.** This measure is similar to the one on packaging implemented by the Ministry of Agriculture, which specifies that imported pulses must bear a grade designation as well as information regarding the packer, net weight, best before date, etc.; that the product is subject to packing requirements packing in a container made from specified materials and free from any insect infestation or other contamination; and that the product-specific quality requirements should include product quality, absence of contaminants and use of colouring matter.

22. C300 - Requirement to pass through specified port of customs.

Two measures apply under this regulation which define obligation for imports to pass through a designated entry point and/or customs office for inspection, testing, etc. The 2 measures are:

1. **Plant Quarantine Order (Regulation of Import into India), 2003 as amended in Mar 2016.** This order is implemented by the Ministry of Agriculture, Department of Agriculture and Cooperation, Directorate of Plant Protection, Quarantine and Storage. It provides that imported consignments of plants and plant products shall be imported through prescribed ports of entry; and that imported plants and plant products are subject to an import permit, a phytosanitary certificate and an inspection certificate issued by an authorized officer. Imported plants and plant products are also subject to geographical restrictions.
2. **Plant Quarantine Order (Regulation of Import into India), 2003 as amended in November 2019.** This order is also implemented by the Ministry of Agriculture, Department of Agriculture and Cooperation, Directorate of Plant Protection, Quarantine and Storage. Its contents are similar to (i) above.

23. B150 - Registration requirement for importers for TBT reasons.

The Legal Metrology (Packaged Commodities) Rules, 2011 implemented by the Ministry of Consumer Affairs, Food & Public Distribution specifies that importers should be registered in order to import certain products: To register, importers need to comply with certain requirements, documentation and registration fees. It also includes the registration of establishments producing certain products. All packaged commodities must bear a label with the name and address of the manufacturer or importer, the common or generic names of the commodity, the net quantity and the month and the year it is packed. Quantities must be given in metric values. Listed commodities must be packed in standard quantities by weight, measure or number.

Annex 20: Kenya total bilateral trade with the selected Asian Continent lead export markets (2013-2022 (US$ '000)

TRADE FACTOR	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	TOTAL 2013-2022
Bilateral trade between Kenya and India (US$ '000)											
Kenya exports to India	110,011	99,525	91,416	117,475	57,858	89,828	52,989	72,235	94,978	68,380	854,695
India exports to Kenya	3,938,382	4,405,448	3,183,244	2,457,597	1,818,309	2,128,582	1,931,189	1,985,803	2,496,294	2,940,261	27,285,109
Total bilateral trade between Kenya and Pakistan	4,048,393	4,504,973	3,274,660	2,575,072	1,876,167	2,218,410	1,984,178	2,058,038	2,591,272	3,008,641	28,139,804
Trade balance	-3,828,371	-4,305,923	-3,091,828	-2,340,122	-1,760,451	-2,038,754	-1,878,200	-1,913,568	-2,401,316	-2,871,881	-26,430,414
Bilateral trade between Kenya and Pakistan (US$ '000)											
Kenya exports to Pakistan	280,165	250,407	359,878	396,767	619,604	586,164	443,431	513,662	485,039	544,272	4,479,389
Pakistan exports to Kenya	258,381	332,813	278,806	266,203	319,934	278,819	267,277	273,386	250,264	312,258	2,838,141
Total bilateral trade between Kenya and Pakistan	538,546	583,220	638,684	662,970	939,538	864,983	710,708	787,048	735,303	856,530	7,317,530
Trade balance	21,784	-82,406	81,072	130,564	299,670	307,345	176,154	240,276	234,775	232,014	1,641,248
Bilateral trade between Kenya and United Arab Emirates (US$ '000)											
Kenya exports to UAE	291,933	229,670	298,511	305,298	255,067	345,543	379,259	323,619	315,268	373,679	3,117,847
UAE exports to Kenya	515,889	621,812	713,610	637,579	1,833,982	1,576,639	2,300,040	1,568,390	1,833,775	1,782,163	13,383,879
Total bilateral trade between Kenya and UAE	807,822	851,482	1,012,121	942,877	2,089,049	1,922,182	2,679,299	1,892,009	2,149,043	2,155,842	16,501,726
Trade balance	-223,956	-392,142	-415,099	-332,281	-1,578,915	-1,231,096	-1,920,781	-1,244,771	-1,518,507	-1,408,484	-10,266,032

TRADE FACTOR	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	TOTAL 2013-2022
Bilateral trade between Kenya and Vietnam (US$ '000											
Kenya exports to Vietnam	5,164	5,165	3,864	6,292	14,393	20,064	15,314	11,693	20,967	25,374	128,290
Vietnam exports to Kenya	50,617	39,029	34,491	58,315	33,741	39,278	38,140	91,812	89,340	117,052	591,815
Total bilateral trade between Kenya and Vietnam	55,781	44,194	38,355	64,607	48,134	59,342	53,454	103,505	110,307	142,426	720,105
Trade balance	-45,453	-33,864	-30,627	-52,023	-19,348	-19,214	-22,826	-80,119	-68,373	-91,678	-463,525
Bilateral trade between Kenya and Saudi Arabia (US$ '000)											
Kenya exports to Saudi Arabia	37,033	55,473	56,673	66,308	75,888	98,884	87,265	76,594	70,230	105,172	729,520
Saudi Arabia exports to Kenya	296,612	398,723	264,954	224,527	224,877	327,521	352,913	337,718	1,439,224	1,550,692	5,417,761
Total bilateral trade between Kenya and Saudi Arabia	333,645	454,196	321,627	290,835	300,765	426,405	440,178	414,312	1,509,454	1,655,864	6,147,281
Trade balance	-259,579	-343,250	-208,281	-158,219	-148,989	-228,637	-265,648	-261,124	-1,368,994	-1,445,520	-4,688,241
Bilateral trade between Kenya and Vietnam (US$ '000)											
Kenya exports to Vietnam	5,164	5,165	3,864	6,292	14,393	20,064	15,314	11,693	20,967	25,374	128,290
Vietnam exports to Kenya	50,617	39,029	34,491	58,315	33,741	39,278	38,140	91,812	89,340	117,052	591,815
Total bilateral trade between Kenya and Vietnam	55,781	44,194	38,355	64,607	48,134	59,342	53,454	103,505	110,307	142,426	720,105
Trade balance	-45,453	-33,864	-30,627	-52,023	-19,348	-19,214	-22,826	-80,119	-68,373	-91,678	-463,525

Source: Author's calculations based on ITC statistics (www.intracen.org); sourced from Kenya National Bureau of Statistics

Annex 21: India Economic Indicators

INDICATOR NAME	2018	2019	2020	2021	2022	GROWTH RATE (%) 2018-2022
Population, total	1,369,003,306	1,383,112,050	1,396,387,127	1,407,563,842	1,417,173,173	3.5%
Urban population	465,871,825	476,786,386	487,702,168	498,179,071	508,368,361	9.1%
Cost to import, border compliance (US$)	331	266				
Cost to import, documentary compliance (US$)	100	100				
GDP (current US$)	2,702,929,639,862	2,835,606,242,052	2,671,595,389,576	3,150,306,834,280	3,385,089,881,935	25%
GDP per capita (current US$)	1,974	2,050	1,913	2,238	2,389	21%
GDP growth (annual %)	6	4	-6	9	7	
GDP per capita growth (annual %)	5	3	-7	8	6	
Time to import, border compliance (hours)	97	65				
Time to import, documentary compliance (hours)	30	20				

Source: World Development Indicators; World Bank; https://www.worldbank.org

Annex 22: Pakistan economic indicators

INDICATOR NAME	2018	2019	2020	2021	2022	GROWTH RATE (%) 2018-2022
Population, total	219,731,479	223,293,280	227,196,741	231,402,117	235,824,862	7%
Urban population	80,566,744	82,410,851	84,437,669	86,636,953	88,979,079	10%
GDP (current US$)	356,128,167,703	320,909,472,926	300,425,609,206	348,262,544,719	376,532,751,807	6%
GDP per capita (current US$)	1,621	1,437	1,322	1,505	1,597	-1%
GDP growth (annual %)	6	2	-1	6	6	
GDP per capita growth (annual %)	5	1	-3	5	4	
Time to import, border compliance (hours)	120	120				
Time to import, documentary compliance (hours)	96	96				
Cost to import, border compliance (US$)	287	287				
Cost to import, documentary compliance (US$)	130	130				

Source: World Development Indicators; World Bank; https://www.worldbank.org

Annex 23: UAE economic indicators

INDICATOR NAME	2018	2019	2020	2021	2022	GROWTH RATE (%) 2018-2022
Population, total	9,140,169	9,211,657	9,287,289	9,365,145	9,441,129	3%
Urban population	7,908,257	7,994,705	8,084,399	8,175,678	8,265,048	5%
GDP (current US$)	427,049,432,158	417,989,721,743	349,473,015,330	415,021,590,688	507,534,921,715	19%
GDP per capita (current US$)	46,722	45,376	37,629	44,316	53,758	15%
GDP growth (annual %)	1	1	-5	4	7	
GDP per capita growth (annual %)	1	0	-6	3	7	
Time to import, border compliance (hours)	54	54				
Time to import, documentary compliance (hours)	12	12				
Cost to import, border compliance (US$)	678	553				
Cost to import, documentary compliance (US$)	283	283				

Source: World Development Indicators; World Bank; https://www.worldbank.org

Annex 24: Viet Nam economic indicators

INDICATOR NAME	2018	2019	2020	2021	2022	GROWTH RATE (%) 2018-2022
Population, total	94,914,330	95,776,716	96,648,685	97,468,029	98,186,856	3.4%
Urban population	34,092,278	35,081,096	36,088,619	37,088,534	38,063,117	12%
GDP (current US$)	310,106,472,643	334,365,257,920	346,615,750,167	366,137,590,718	408,802,379,068	32%
GDP per capita (current US$)	3,267	3,491	3,586	3,756	4,164	27%
GDP growth (annual %)	7	7	3	3	8	
GDP per capita growth (annual %)	6	6	2	2	7	
Time to import, border compliance (hours)	56	56				
Time to import, documentary compliance (hours)	76	76				
Cost to import, border compliance (US$)	373	373				
Cost to import, documentary compliance (US$)	183	183				

Source: World Development Indicators; World Bank; https://www.worldbank.org

Annex 25: Saudi Arabia economic indicators

INDICATOR NAME	2018	2019	2020	2021	2022	GROWTH RATE (%) 2018-2022
Population, total	35,018,133	35,827,362	35,997,107	35,950,396	36,408,820	4%
Urban population	29,360,603	30,118,272	30,340,882	30,380,961	30,848,829	5%
GDP (current US$)	846,583,785,180	838,564,705,625	734,271,183,955	868,585,871,465	1,108,148,978,218	31%
GDP per capita (current US$)	24,176	23,406	20,398	24,161	30,436	26%
GDP growth (annual %)	3	1	-4	4	9	
GDP per capita growth (annual %)	0	-1	-5	4	7	
Time to import, border compliance (hours)	228	72				
Time to import, documentary compliance (hours)	90	32				
Cost to import, border compliance (US$)	779	464				
Cost to import, documentary compliance (US$)	390	267				

Source: World Development Indicators; World Bank; https://www.worldbank.org

Annex 26: Examples of trade obstacles reported by various countries to the ITC TOAM (as at December 2023) which are relevant to Kenyan fresh vegetables and fruits exports

DATE REPORTED	IMPOSING COUNTRY	TYPE OF REPORTED TRADE OBSTACLE	DESCRIPTION OF TRADE OBSTACLE	PRODUCTS AFFECTED	IMPACTS OF TRADE OBSTACLE	REMARKS AND RECOMMENDATIONS BY EXPORTER	Current Status (as at Dec. 2023)
30/05/2023	Ghana	Limited or inadequate transport and storage facilities (e.g. refrigerated transport)	Requirement that processed and agro-food products must be stored and transported in a regulated container and must not exceed specified temperature or humidity levels. Conforming to these requirements means and exporter must acquire a special container which is very expensive.	Flour, meal and powder of the dried leguminous vegetables of HS 0713, and roots or tubers of HS 0714	Limited exports of flour, meal and powder of dried leguminous vegetables from Ghana	Plants, animals and fresh foods are perishable goods which require special storage and transport processes to ensure they are kept below a certain temperature. Exporters therefore recommend subsidy support through the Ghana Standards Authority to enable them to overcome the container price obstacles.	Trade obstacle is being resolved
31/05/2023	France and EU countries	Stringent mandatory regulation/ procedure on imported organic foods	Regulation on testing of organic foods and specifically on imported and traded peel of citrus fruits and melons in France and the wider EU market is too stringent and very expensive which makes it difficult to comply with.	Organic foods and specifically peel of citrus fruits and melons. NB: The regulation is also relevant to imported organic vegetables and fruits	Limited access to EU markets for organic foods including vegetables and fruits	The regulation on testing of organic foods should be relaxed as it is too strict, very expensive and difficult to comply with.	Trade obstacle is being resolved

DATE REPORTED	IMPOSING COUNTRY	TYPE OF REPORTED TRADE OBSTACLE	DESCRIPTION OF TRADE OBSTACLE	PRODUCTS AFFECTED	IMPACTS OF TRADE OBSTACLE	REMARKS AND RECOMMENDATIONS BY EXPORTER	Current Status (as at Dec. 2023)
31/05/2023	EU countries	Stringent mandatory regulation/ procedure to produce EUR1 Movement Certificate as proof that no further product transformation has occurred during transport from country of origin to EU using the	It is very difficult to export fresh produce and raw agro-food products from developing countries to EU countries because the ROO requirement to provide EUR1 Movement Certificates is difficult to conform with.	Fresh produce and raw agro-food products; including packaged fresh and dried fruits of HS 08 (avocados, mangoes, pineapples, citrus fruits, etc.) and fresh and dried vegetables of HS 07)	Exports of fruits and vegetables that originate from potential beneficiary countries of EU preferential tariffs find it difficult to access EU markets since proofing the origin using the EUR1 Movement Certificate is difficult	Acquiring the EUR1 certificate is expensive and difficult. Exporters need support to obtain the certificate in order to comply with EU ROO regulations that require proof of no further product transformation during transport from the country of origin to the EU destination country	Trade obstacle is being resolved as a special case
09/07/2022 01/09/2022 06/09/2022 09/22/2022	France and EU countries	Stringent mandatory regulation/ procedure on imported organic foods	France as well as other EU countries apply mandatory quality and safety inspections on imported agricultural products aimed to certify that the goods do not contain "Bemisia tabaci" bacteria and other pathogens. Detection of the bacteria on imported agricultural products has resulted into recurring rejections by France airport inspection authorities.	Fresh produce and raw agro-food products including fresh and dried edible vegetables, roots and tubers (HS 07), edible fruit and nuts	Limited access to EU markets for organic foods including vegetables and fruits	The regulation on testing of organic foods should be relaxed as it is too strict, very expensive and difficult to comply with.	Trade obstacle is being resolved

DATE REPORTED	IMPOSING COUNTRY	TYPE OF REPORTED TRADE OBSTACLE	DESCRIPTION OF TRADE OBSTACLE	PRODUCTS AFFECTED	IMPACTS OF TRADE OBSTACLE	REMARKS AND RECOMMENDATIONS BY EXPORTER	Current Status (as at Dec. 2023)
04/09/2022	Guinea	Non- recognition of phytosanitary certificates issued by competent authorities at entry border crossings, and subsequent demands for bribes by border officials.	Phytosanitary certificates issued on exports and imports of plant materials by competent authorities are not recognized by border officials. Exporters and importers are therefore forced to negotiate unofficial facilitation payments to border officials in order to cross the borders.	Fresh produce and raw agro-food products including fresh and dried edible vegetables, roots and tubers (HS 07), edible fruit and nuts	Bribes demanded by border crossing agents contributes to increased prices of imported goods and losses to economic operators	• There is need to stem out corruption at the border crossings. • In addition there is need for focused training of officials who man border crossings on how to recognise authenticate documents issued by the competent authorities in Guinea and also in the country of origin.	
01/11/2014	India	Delays in issuing weighbridge certificates by the Chamber of Commerce on cargo including fresh produce and raw agro-food products.	There are delays in issuing weighing certificates by the Chamber of Commerce on imported cargo the head of the certificate weighing service only signs the weigh certificate twice a day, thus creating delays in clearing imports.	Fresh produce and raw agro-food products including fresh and dried edible vegetables, roots and tubers (HS 07), edible fruit and nuts (HS 08)	Time loss incurred by importers	There is need to improve procedures for issuance of weighing certificates on imported cargo.	Obstacle has been resolved
08/28/2023	Benin	Arbitrary behaviour regarding application of customs procedures/ regulations	Benin customs regulations regarding the use of certificate of origin no. 123456 are not clear, leading to importers having to spend more than 3 hours at border stations to get clearance on imported consignments.	Fresh produce and raw agro-food products including fresh and dried edible vegetables, roots and tubers (HS 07), edible fruit and nuts (HS 08)	Importers have to spend more than 3 hours at border stations to get clearance on imported consignments.	Need for clear regulations and training of importers on how to apply rules of origin on imports.	Trade obstacle is being resolved

Source: International Trade Centre (www.intracen.org/resources/tools/trade-obstacles-alert-mechanism-0)


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