

THE CUSTOMS AND EXCISE ACT
(Cap. 472)

IN EXERCISE of the powers conferred by section 234 of the Customs and Excise Act, the Minister for Finance makes the following Order—

THE CUSTOMS AND EXCISE (EXPORTS) REGULATIONS, 2000

1. These Regulations may be cited as the Customs and Excise (Exports) Regulations, 2000.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“country of origin” means the country from which any goods are obtained;

“country of importation” means the country to which goods are being exported;

“textiles” means textiles and textile products of cotton, wool, silk, man-made fibre and vegetable fibre other than cotton;

“Trade and Development Act, 2000” means the Trade and Development Act enacted by the Congress of the United States of America and duly signed into law on the 18th May, 2000;

“transshipment” means carriage coastwise or the transit of goods through Kenya from a third country to the country of importation;

“visa” means a stamp by the Government of Kenya in respect of any goods for export originating from Kenya which—

(a) authorizes the shipment of the goods;

(b) bears a description of the goods; and

(c) certifies the country of origin thereof.

3. (1) Goods shall be deemed to originate from Kenya if they are wholly obtained from Kenya or have undergone a substantial transformation in Kenya.

(2) Goods shall be deemed to be wholly obtained in Kenya if they are—

- (a) harvested;
- (b) gathered;
- (c) collected;
- (d) mined;
- (e) fished;
- (f) reared;
- (g) hatched;
- (h) hunted; or
- (i) captured

in Kenya.

(3) Goods shall be deemed to have undergone substantial transformation in Kenya if they have undergone a process of manufacturing in Kenya—

- (a) which has transformed the constituent material in form, value, description, use, name or appearance; or
- (b) which has led to a change in the tariff heading; or
- (c) which has transformed the value of such goods to the extent that the constituent material not originating from Kenya is worth not more than sixty-five percent of the ex-factory price of the finished goods; or
- (d) using materials originating in Kenya or originating from any country with which Kenya has a preferential trade agreement;
- (e) using materials comprising of textiles and apparel articles claiming preferential tariff treatment under Section 112 of the Trade and Development Act of 2000.

Processes not
conferring
origin.

4. The following processes shall not be deemed as conferring origin to any goods-

- (a) packing, unpacking, bottling, placing in flasks, bags cases or boxes and all other simple packing operations or separation of materials;

- (b) (i) simple mixing of ingredients;
- (ii) simple assembly of components and parts to constitute a complete part; or
- (iii) a combination of (i) and (ii).
- (c) operations to ensure preservation of goods;
- (d) bending and cutting;
- (e) drying, enzyme washing, acid washing, roasting; or
- (f) dyeing, bleaching, polishing or screen printing.

5. A mixture shall be deemed as originating in Kenya if the constituent materials which give the mixture its essential character originate in Kenya.

Treatment of mixtures.

6. In determining the origin of goods assembled in Kenya, parts thereof shall be deemed to originate in Kenya if they have been manufactured in Kenya.

Treatment of parts.

7. Notwithstanding the foregoing, for purposes of determining the origin of goods eligible for benefits under any preferential trade agreement, the rules of origin of the country of importation shall apply.

8. In determining the ex-factory price of any goods, the following costs shall not be deemed to be costs of manufacturing—

Treatment costs.

- (a) marketing and advertising costs;
- (b) the costs of financing the inventory;
- (c) storage costs;
- (d) packing costs; or
- (e) any other cost which does not contribute to a change in the goods.

9. Where, in respect of any goods originating in Kenya, there is in the country of importation a requirement of a visa, the exporter of such goods shall apply for such visa in accordance with paragraph 10.

Requirement for visa.

10. (1) An application for a visa under Regulation 9 shall be in the form specified in the First Schedule and shall be supported by the shipping documents in respect of the goods.

Application form.

(2) On verification of the documents submitted under subparagraph (1), the Customs shall issue the visa on the original invoice.

(3) A visa shall be in the form set out in the Second Schedule and shall be—

- (a) of such grouping as may from time to time be specified by the Minister by notice in the Gazette.
- (b) accompanied by a certificate of exportation at the port of exit; and
- (c) endorsed by the Director of External Trade.

Validation of visa and certificate of origin.

11. Where there exists any doubt as to the origin of goods being exported, the country of importation may—

- (a) verify the certificates of export by way of written questionnaires to the exporter or producer in Kenya;
- (b) return a certified copy of the visa to the Customs for verification and validation; or
- (c) subject to any existing reciprocal arrangements with the country of importation, visit the premises of an exporter or producer to verify production records and observe the facilities used in the production of the goods.

Verification of doubtful certificates on visas.

12. For the purposes of conducting a verification visit, the country of importation shall, through its relevant body, deliver a written notification of its intention to conduct the visit to the Commissioner indicating the number of factories to be visited.

Procedure for notification of visit.

13. The notification referred to in Regulation 12 above shall include—

- (a) the identity of the authorised officials from the importing country performing the verification visit;
- (b) the estimated number of the exporters or producers whose premises are to be visited;
- (c) the approximate date and proposed places for the proposed verification.

Time of verification visit.

14. (1) The proposed verification visit shall take place within such period, not exceeding fourteen days, from the date of receipt of the

notification thereof or as may be agreed between the Commissioner and the body issuing the notification.

(2) The exporter or producer whose premises are to be visited may designate a person of his choice to be an observer during the verification visit conducted under these Regulations.

15. Verification of the regional value content requirement in respect of the goods shall be done in accordance with the generally accepted accounting principles applicable in Kenya.

Generally accepted accounting principles to apply.

16. Any person conducting a verification visit shall provide the Commissioner with the results of such visit in writing together with the reasons for the findings and the Commissioner may forward the same to the exporter or producer to whose premises the results relate.

Exporter to be furnished with results of verification.

17. (1) An exporter or producer of goods may request the Commissioner for a verification and advance ruling in respect of the goods.

Advance ruling.

(2) Any person requesting for an advance ruling shall provide the Commissioner with all information that the Commissioner may require for determination of the origin of the goods.

(3) The Commissioner shall after obtaining all necessary information under subparagraph (2), issue the ruling and shall provide to the person requesting such ruling a full explanation of the reasons thereof.

18. The Commissioner may revoke an advance ruling—

Revocation of advance ruling.

(a) if the ruling is based on an error—

(i) of fact; or

(ii) in the tariff classification of the goods or material which are the subject of the ruling; or

(iii) in the application of a value content requirement; or

(b) if the ruling is at variance with a preferential trade agreement between Kenya and the importing country; or

(c) to conform with a judicial decision or change in any written law.

Appeal.

19. A person against whom an unfavourable ruling has been given may appeal—

- (a) to the Commissioner for review of the decision; or
- (b) to any competent court of law.

Commissioner to forward return.

20. Subject to the existence of a preferential trade agreement between Kenya and any other country, the Commissioner may forward a monthly return of all visas issued and goods exported to the customs administration of that other country.

Offences.

21. (1) A person who on a matter relating to a visa—

- (a) fails to furnish information when required to do so; or
- (b) furnishes information which is incorrect in any material particular; or
- (c) forges or in any way alters a visa; or
- (d) fraudulently declares a false origin of goods; or
- (e) uses counterfeit documents in support of an application therefor; or
- (f) fails to keep proper records relating to production of goods, including information relating to—
 - (i) materials used in production;
 - (ii) the place of production;
 - (iii) the number and identification of the types of machinery used in production;
 - (iv) the number of workers employed in production,

shall be guilty of an offence.

(2) Any person found guilty of an offence under paragraph (1) shall be liable to a fine not exceeding one million shillings or imprisonment for a period not exceeding three years, or both.

(3) The Court may in addition to any penalty imposed under paragraph (2) order that the person found guilty under that paragraph be not allowed to export goods under any preferential trade agreement.

(4) Any goods the subject of an offence under paragraph (1) shall be liable to forfeiture.

**FIRST SCHEDULE
REPUBLIC OF KENYA
APPLICATION FOR VISA**

TO: THE COMMISSIONER OF CUSTOMS AND EXCISE

Name of Exporter

PIN No. **V.A.T. Reg. No.**

Physical Address

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Postal Address **Tel.:** **E-mail**

Reasons for which Visa is required

Country of Importation: **Name and Address of Importer at Country of**

Importation

Product Description

Quantity to be exported **Value**

B/L No.

Ship/Vessel and Voyage No.

C63 No. **Invoice No.**

Date of Exportation:

Name of Manufacturer (if different from exporter)

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Name and Address of sources of Raw material

Quantity of Raw material

Value of Raw material

Documents to be attached to this application:

1. Customs Export Entries.
2. Invoice (original).
3. Bill of Lading.
4. Certificate of origin.
5. Others.

**Verified and found
Correct Approved for
Issuance of Visa**

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Director of External Trade

Visa issuedDate

Proper Officer

SECOND SCHEDULE

VISA



NOTES

1. The Visa shall be circular, in blue ink.
2. One stamp only shall appear on the front of the original invoice.
3. The Visa Number shall be in a standard nine character format as follows:
 - First character represents the Visa Grouping;
 - Second and third characters represent Kenya's ISO Code;
 - Fourth through ninth characters represent the Visa serial number.

Dated the 9th November, 2000.

C. B. OKEMO,
Minister for Finance.