Physikalisch-Technische Bundesanstalt
Braunschweig und Berlin
National Metrology Institute

INTERNATIONAL COOPERATION

# Pre-Export Verification of Conformity in Kenya

**Comprehensive background paper**



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DEUTSCHE ZUSAMMENARBEIT

# Annexes

On behalf of

Federal Ministry
for Economic Cooperation
and Development

On behalf of the Federal Government of Germany, the Physikalisch-Technische Bundesanstalt promotes the improvement of the framework conditions for economic, social and environmentally friendly action and thus supports the development of quality infrastructure.



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# 1. Introduction

Pre-Verification of Conformity (PVoC) is a regulatory conformity assessment programme which has been adopted by several developing countries, particularly in Africa and the Middle East. The PVoC programme is applied to products at the respective exporting countries to ensure compliance with the importing country's national standards and technical regulations.

This background paper addresses six key guiding questions:
1. What is PVoC?
2. Why, how and when was the PVoC programme introduced in Kenya?
3. What are the advantages and the disadvantages of the current system?
4. Who are the main stakeholders, and what are their positions on PVoC?
5. How are exporting countries affected by PVoC?
6. Are there any alternatives to PVoC?

This comprehensive background paper presents facts about Kenya's PVoC programme since its rollout in 2005. Governments around the world face a major challenge: the global economy is growing rapidly, and thriving international trade is an ever-present priority. At the same time, public awareness of health risks as well as consumer and environmental protection is increasing, forcing politicians to take innovative and reassuring measures. As a result, many countries currently have a legal framework for the safe and environmentally friendly import of foreign products. To fully comply with these regulations, an independent external body is usually tasked with carrying out conformity assessments.

Verification of conformity (VoC), or product conformity assessment (PCA), are terms used for a specific type of conformity assessment required for shipments or consignments being imported or exported. Often called *consignment-based conformity assessment* (CBCA), it specifies that individual consignments require a certificate from a qualified testing, inspection and certification (TIC) company. It includes the assessment of the conformity of goods in accordance with nationally applicable standards or internationally recognised equivalents.

The result of a successfully completed VoC procedure is a certificate of conformity (CoC). A CoC is required when clearing a shipment in the country of destination.

These certificates are generally used to ensure that substandard or unsafe products or materials are not imported or exported, particularly for countries that do not have the sufficient infrastructure to test the quality of all imports. In these cases, a contract or licence is given to qualified TIC companies to perform the quality checks at the country of origin before the consignment is shipped or exported.

TIC companies usually subscribe to TIC Council which currently represents over 100 international third-party testing, inspection, certification and verification organisations around the world.

According to its website, the TIC Council "gives a choice to the industry, bringing robust information and aligned positions to support the legislative and regulatory processes, be it at a local, national or regional level. TIC Council also provides its members with a political monitoring of key issues relevant to the sector through a weekly snapshot of key regulatory developments across key regions such as Europe, the Americas, India and the Asia-Pacific Region."[1]

Below is a list of TIC companies commonly used for the VoC or similar types of programmes:
- Bureau Veritas
- China Certification & Inspection Group Co Ltd
- Cotecna Inspection SA
- Intertek
- Japan Vehicle Inspection Centre Co Ltd (JEVIC)
- Quality Inspection Services Japan (QISJ)
- Société Générale de Surveillance SA (SGS)
- TÜV Austria

1 *https://www.tic-council.org/membership/members-directory*

# 2. What is Pre-Verification of Conformity (PVoC)?

Pre-verification of conformity (PVoC) is a regulatory conformity assessment programme. Several countries in Africa and the Middle East have adopted this approach of checking the compliance of products that are covered in the importing country's technical regulations.

The primary objectives of applying the pre-shipment verification of conformity programme are:

- Ensuring the quality of products, health and safety
- Protecting the environment

For example, to assure its consumers of the quality and safety of imported goods, the Uganda National Bureau of Standards (UNBS) – on behalf of the Government of Uganda – implemented a series of guidelines known as the *Pre-Export Verification of Conformity to Standards Programme* (PVoC). Under Uganda's PVoC, every consignment of regulated products imported to the country must have a certificate of conformity.

Tanzania requires that all regulated products imported into the country be assessed and conform to the requirements of the Tanzania Bureau of Standards' (TBS) PVoC programme. Under this PVoC programme, a certificate of conformity (CoC) is compulsory for customs clearance. The CoC is considered as proof that products meet all applicable national standards or approved equivalents and technical regulations. Furthermore, it must be issued by an authorised inspection and certification body before shipment.

The Kingdom of Saudi Arabia requires that all consignments of products that are covered by a Saudi Standards, Metrology and Quality Organization (SASO) Technical Regulation and that are to be exported to the country must be issued with a product certificate. It is also required that every consignment be accompanied by a shipment certificate. These certificates signify compliance with the applicable standards and technical regulations.

Table 1 below shows a non-exhaustive list of countries that have adopted similar programmes.

| No | Country | PVoC Equivalent |
|---|---|---|
| 1 | Algeria | Certificate of Conformity for Exports |
| 2 | Burundi | PVoC programme |
| 3 | Cameroon | Pre-Shipment Evaluation of Conformity (PECAE) |
| 4 | Central African Republic (CAR) | Pre-Verification of Conformity of Imported Goods |
| 5 | Cote d'Ivoire | Verification of Conformity (VoC) |
| 6 | Egypt | Conformity Assessment Services |
| 7 | Ethiopia | Product Conformity Certificate (ECAE) |
| 8 | Gabon | Certificate of Conformity (PROGEC) |
| 9 | Kenya | PVoC programme |
| 10 | Kingdom of Morocco | Conformity Assessment of Industrial Products Program |
| 11 | Kuwait | KUCAS Certification |
| 13 | Mexico | Pre-import verification of conformity of labels |
| 14 | Mongolia | Conformity assessment programme |
| 15 | Nigeria | Standards Organization Nigeria Conformity Assessment Program (SONCAP) |
| 16 | Qatar | PVoC programme |
| 17 | Saudi Arabia | SASO Certificate of Conformity |
| 18 | Saudi Arabia | SFDA Certificate of Conformity (SALEEM) |
| 19 | South Sudan | Conformity Assessment Program |
| 20 | Tanzania | PVoC programme |
| 21 | Uganda | Pre-Export Verification of Conformity to Standards Programme |
| 22 | Zanzibar | PVoC Product Conformity Assessment (PCA) Services |

Table 1: List of countries that have adopted PVoC programmes

Although these programmes may have different names and are often tailored to meet the requirements of the individual countries, the objectives remain the same. Similarly, the following is a typical approach to implementation:

1. The government instructs the national standards body in the country to enforce specific standards of quality and safety on imports as well as to issue a list of products which must comply.
2. The standards body appoints the TIC to provide test services to importers and issues certificates of conformity for products that pass the tests.

# 3. PVoC Programme in Kenya

## 3.1. Background information on pre-shipment inspection services

In the past, pre-shipment inspection (PSI) was used as a trade facilitation service in various countries. Governments employed PSI to speed up the clearance of goods at the ports of entry or discharge. PSI activities were considered to concern all verification of goods to be exported to the territory of the user government for the following: quality, quantity, price (including currency exchange rate), financial terms (and/or customs valuation) and classification.

From the outset, the form of pre-shipment inspection (PSI) services adopted in Kenya involved verification of the value of imports for purposes of foreign exchange control. In this regard, the Central Bank of Kenya (CBK) carried out its administration, with the principal pre-shipment inspection company being Société Générale de Surveillance (SGS). Primarily, this form of PSI work was aimed at preventing capital flight through over-valuation of goods.

Starting in 1994, the PSI system underwent significant changes in Kenya. First, the Ministry of Finance was tasked with managing PSI. The process involved contracting several PSI companies to carry out pre-shipment inspections for customs and valuations regulation.

The objectives of pre-shipment inspection were elaborated to include:

- Verification of the quantity and quality of imports
- Assistance to customs by providing independent value for the collection of duties and taxes
- Providing the Government of Kenya (GoK) with reliable and up-to-date statistics on imports.

In essence, the aim was to prevent the loss of customs revenue due to undervaluation by importers.

Just as in 2005, when the GoK was exiting the pre-inspection testing regime, the operations of PSI companies were governed by the contracts between them and the GoK. In the contract, imported goods were classified under different schedules (Schedules 1–6) with differing inspection levels. The details of the schedules are listed in Table 2 below.

| Schedule | Classification |
|---|---|
| 1 | Imports exempt from pre-shipment inspection |
| 2 | Imports subject to detailed quality inspection only |
| 3 | Imports subject to comparative price determination only |
| 4 | Imports subject to full detailed inspection |
| 5 | Imports subject to destination inspection |
| 6 | All other imports not specified in Schedules 1–5 |

Table 2: Schedules of classified goods

Of the imports listed above, only goods in Schedules 2 and 4 were subject to any form of quality inspection – and any other goods that the Commissioner of Customs may have determined as provided for in the contracts. However, most goods imported into Kenya were classified under Schedule 6, which did not oblige the contracted PSI companies to undertake quality inspection.

As a result, most imports were not subjected to pre-shipment inspection to verify quality standards, and therefore many substandard and/or counterfeit goods easily found their way into the country. These goods could only be detected when Kenya Bureau of Standards (KEBS) carried out quality inspections at the points of entry into the country or through routine market surveillance.

The PSI companies were required to ensure that published Kenya Standards, any specific laws or regulations or any other acceptable international standards were complied with for all goods subjected to detailed quality inspections. This seems not to have been taken up very seriously by the PSI companies, which ultimately led to the decision of the relevant authorities to institute measures. Compliance, however, was performed in an uncoordinated manner, resulting in duplication of work, delays, demurrage and, of course, increased costs. In addition, under the existing PSI programme, all imports with a value of less than USD 5,000 were not subjected to pre-shipment inspection.

Consequently, KEBS was directed by the Government of Kenya to build and establish the capacity to carry out the inspection of imported goods for conformity to standards upon the exit of Kenya from the country's pre-shipment inspection regime in 2005. Accordingly, the commitment to establishing inspection of imports was included as a priority initiative in KEBS's *Strategic Plan 2002/03-2006/07*.

## 3.2. PVoC rollout

In June 2005, the Government of Kenya confirmed its intention to exit the PSI regime. Under the existing regime administered under the Kenya Revenue Authority (KRA), the legitimate objective of Kenya concerning quality-related measures was carried out on behalf of KEBS by KRA under the Quality Inspection of Imports Order, 1998 regulations (Legal Notice 155 of 1998). The Quality Inspection of Imports Order's requirements were incorporated under Schedules 2 and 4 of the contracts executed by KRA with the PSI agencies.

Given Kenya's imminent exit (in December 2005) from the pre-shipment inspection regime governed under the WTO Agreement on Pre-shipment Inspection and replaced with destination inspection for customs purposes, the PVoC programme was established in July 2005 under the Verification of Conformity to Kenya Standards of Imports Order, 2005 (Legal Notice No 78 of 2005). The programme was initially named *Pre-shipment Verification of Conformity to Standards* and later, in 2009, renamed *Pre-Export Verification to Conformity Standards*. It is currently known as *Pre-Verification of Conformity*.

PVoC is a conformity assessment process used to verify that products which are to be imported into Kenya comply with the applicable Kenya Standards or equivalents, regulations and technical requirements before shipment. As such, it is usually the duty of the supplier to demonstrate that their products meet Kenya Standards.

The initial objective of the PVoC programme was to ensure that proof of conformity assessment would be undertaken at the country of origin to guarantee the acceptance of imported goods into Kenya, meaning that it would be verified that imported products conform to the applicable Kenya Standards, approved equivalents and technical regulations before shipment. In addition, PVoC would result in the realisation of government policies for economic growth and would result in the reduction or elimination of non-tariff barriers to trade.

On the one hand, the realisation of PVoC is dependent on the appointment of competent conformity assessment bodies (inspection agency and/or certification bodies) which cooperate closely. On the other hand, the definition of products to be subjected to PVoC and identification of applicable standards is key. The inspection agency/certification bodies should have the capacity to test and inspect and be available where their services are required. At the same time, the products to be subjected to inspection should be clearly defined based on health, safety and environmental protection. These elements are crucial factors for the overall success of the regime.

The implementation of the PVoC programme commenced on 29 September 2005, following the signing of contracts with Intertek International Limited (ITS) and *Société Générale de Surveillance SA* (SGS).

Over the years, the following agencies/partners that have been involved with the PVoC programme at one time or another: *Bureau Veritas, China Certification & Inspection Group Co Ltd, China Hansom Inspection & Certificate Co Ltd, Cotecna Inspection SA, Intertek International Ltd, SGS SA, TÜV Austria (Turk) Kenya Limited and World Standardization Certification & Testing Group (Shenzhen) Co, Ltd.*

## 3.3. PVoC regime

In 2005, the Government in Kenya adopted the PVoC programme, a regulatory conformity assessment regime, and tasked the Kenya Bureau of Standards (KEBS) with the administration of it. The PVoC programme is applied to products at the respective exporting countries to ensure compliance with Kenya Standards, approved specifications and other applicable regulations.

> The PVoC programme, simply put, is an inspection control regime for imported products (goods) destined for Kenya.

Since its inception in 2005, the PVoC programme has been governed by various subsidiary regulations established under the Standards Act (Cap 496), hence it is a **mandatory scheme**.

Under the PVoC regime, products to be imported must undergo verification, inspection and testing at the country of supply (exporting country), and a certificate of conformity (CoC) is required in order to demonstrate that the products meet the applicable standards and regulations. A nonconformity report (NCR) is issued to goods which do not comply with these.

The conformity assessment steps undertaken in PVoC included – but were not limited to – physical inspection before shipment, sampling, testing and analysis in accredited laboratories, auditing of production processes and systems, documentary checks of conformity with regulations and an overall assessment of conformity to standards.

Since the establishment of PVoC in 2005, KEBS has contracted different inspection agencies; cooperation is reviewed every three years. The agencies are assigned specific zones of operations. Restricting PVoC to KEBS-approved agencies/partners limits the freedom of the importer. Importers have experienced delays of up to several days as they wait for an approved PVoC agent to assign an inspector to verify their goods.

## 3.4. PVoC model and methodology

To address the needs of the diverse types of importers – from regular/major importers to individual one-timers (small to medium enterprises) – as well as taking into consideration the needs of both regular importers of the same product and ad hoc importers of various products, the following routes have been adopted:

**Route A (Consignment inspection and testing)**
Under this route, products to be shipped must be both tested and physically inspected to demonstrate conformity to relevant standards and regulatory requirements. Samples shall be drawn during physical inspection for testing in any of the laboratories [that are ISO/IEC 17025-accredited laboratories or PVoC contractor-owned laboratories or Government designated or owned laboratories]. This route is open to all products being exported by either traders or manufacturers. Additionally, all containerized cargo under this route must be sealed by the contracted inspection agencies and seal and container numbers indicated in the CoC.

The following products, based on their risks, are only eligible for certification under Route A:

- Animal and fishery products (fresh and frozen - not further processed)
- Bulk petroleum products and base oils
- Bulk shipments of cereals and pulses such as rice, wheat, beans, maize, etc.
- Edible cooking oils
- Electrical cables
- Fertilizer
- Fresh dairy products

- Fresh horticultural produce
- Liquid petroleum gas (LPG)
- Motorcycle helmets
- Roofing sheets
- Used or secondhand goods

**Route B (Product registration)**
This route offers a fast-track certification process for goods of low risk but with reasonable and consistent levels of quality through registration of such products by the PVoC agent. Product registration is recommended to exporters having frequent shipments of homogenous products. Among the mandatory documents required for registration are test report(s) for previous shipments certified under Route A demonstrating conformity to relevant Kenya Standards or approved specification. The registration is valid for a period of one year. Shipments of registered products are exempted from mandatory testing, however, test reports by the manufacturer traceable to the batches being shipped must be provided to the PVoC agent for evaluation before any certification decision can be made for shipments targeted for inspection.

**Route C (Product licensing)**
This route is open only to manufacturers who can demonstrate existence of a quality management system in their production/manufacturing process. It involves auditing of such production processes and licensing of products manufactured thereof by authorized PVoC agent(s) in line with ISO Guide 28:2004. Products presented for licensing shall be subjected to testing in any of the laboratories listed in Route A to determine their conformity with requirements of relevant Kenya Standards or approved specifications. On successful conclusion of this process, the manufacturer will be presented with a license for the relevant products valid for a period of three (3) years or as determined by the PVoC partner contract validity period. Licensed products shall be subject to random physical inspection by authorized PVoC agent(s) prior to issuance of certificate of conformity and subsequent shipping of the same. However, test reports by the manufacturer traceable to the batches being shipped must be presented to PVoC Agents for evaluation prior to making any certification decision for shipments targeted for inspection.

*Note: The PVoC agent(s) will review the request for certification (RFC) received from the exporter before determining the most appropriate certification route and the applicable standard to be used in the certification process.*

**Route D (Consolidated cargo imports)**
This route is open only to registered importers of consolidated cargo. This is cargo containing a wide range of products; merchandise generally in small quantities; or parcels belonging to several consignees who have pooled or consolidated their parcels to form one consignment. The latter may be declared as belonging to one importer at the port of destination or de-consolidated back into the original individual consignments for delivery to the respective cargo owners upon arrival at destination port. For purposes of this procedure, a consolidated cargo shall contain not less than three assorted products/brands.

Registered consolidators, who bring together separate items from different individuals or sources into a one consignment for importation, shall apply for certification and submit the packing list and commercial invoice to the PVoC agent at least 48 hours before inspection. The PVoC agents shall assign the required number of inspectors to the consolidation points to undertake inspection and thereafter issue certificates of inspection (CoI). High-risk goods imported through this route shall be subjected to testing at destination by KEBS before release. Importers of such goods are required to meet the cost of testing at destination.

| Route | Fees charged |
|---|---|
| A | 0.60 % of the FOB[2] value – min: USD 265, max: USD 2700 |
| B | 0.55 % of the FOB value – min: USD 265, max: USD 2700 |
| C | 0.35 % of the FOB value – min: USD 265, max: USD 2700 |
| D | 0.75 % of the FOB value – min: USD 265, max: USD 2700 |

Table 3: The current fees charged under the PVoC programme

The above fees cover documentary verification, physical inspection and sampling, including sealing of the containers where applicable. The fees do not include the following:

- Laboratory testing
- Manufacturer licensing
- Registration fees
- Re-inspection
- Sampling of bulk shipment

These services shall be charged directly by the contractor on a case-by-case basis.[3]

**In summary, the PVoC regime covers three essential areas:**

1. The scope of goods or products subject to PVoC;
2. The requirements for conformity to standards and/or technical regulations; and
3. The routes for determining conformity of product.

The essential areas have not changed significantly since the start of the programme. However, several subtle changes related to the three areas have been introduced over time.

1. Initially, a list of products falling under the PVoC was established. This list was subject to review with the possibility of adding or removing products from the list. However, over time the list has been expanded to the extent that now all products being imported into Kenya – regardless of whether they are regulated or not – are subjected to PVoC.

2. Some of the products subjected to PVoC do not have quality requirements and are not covered under any technical regulation. A product may be equated with a "similar product", but some of the parameters may not be the same, resulting in the wrong specification/requirements being used for verification. This is especially the case for innovative products. As a result, the verification of such products is no longer credible.

3. Route D was introduced to assist SMEs that were importing small quantities. This route is for consolidated cargo that brings together several consignees with small packages which contain different items. Consolidated cargo may contain electronic items, food items and textiles, for example. As providing verification is challenging, there is a potential loophole for non-verified products, which is a weak point for verification.

In short, the changes introduced have undermined the purpose of the PVoC programme. As changes were made, the original legitimate objectives and intent, emerging best practices and global developments in the application of conformity assessment regimes were not considered.

It can therefore be concluded that changes to the PVoC programme have led to limited innovation and somewhat strengthened regulatory controls. Unfortunately, they are sub-optimal when considering international best practices in the field of quality infrastructure.

2 FOB = freight on board

3 PVoC Manual Version 12 of 22nd June 2022 and *www.kebs.org*

# 4. The Advantages and Disadvantages of the Current PVoC Programme

The primary objective of applying PVoC is to ensure the quality of products, health and safety and environmental protection for Kenyans. Among the expected benefits – in addition to products being shipped conforming to standards and regulations – were:

- Blocking unfair competition from substandard products and especially stopping the influx of counterfeit products
- Speeding up the release process for imports
- Reducing importation costs
- Reducing the number of destructions or re-exportation of consignments

## 4.1. Advantages of the current PVoC programme

The main advantage of the current system is that it allows Kenya to achieve its legitimate objectives, particularly curbing the dumping of substandard goods and reducing the entry of counterfeits.

The PVoC programme allows faster clearance of goods at the port of entry, thereby reducing turnaround time or storage costs for the importer.

## 4.2. Disadvantages of the current PVoC programme

The current PVoC programme also has several disadvantages. First, there are delays in procedures, inspections and documentation, which results in slowed shipments. Another problem is that the inspection fee is high, causing additional costs to be incurred by the importers. Furthermore, importers do not have the freedom to use another testing agency or company, as the system is a monopoly scheme. Many importers, manufacturers, trade associations and companies have voiced frustration with the PVoC programme and view it as an unnecessary additional layer of inspection and certification.

1. **Monopoly:** Although KEBS has contracted six agencies/partners, the agencies are assigned specific zones of operation (see Annex 1). Requiring the use of approved PVoC agencies/partners limits the choices of the importer. Sometimes importers must wait for days before a PVoC agent can assign an inspector to verify their goods.

2. **Multiple certification & testing steps:** In the implementation of the PVoC programme, there is an over-prescription of the specific conformity assessment scheme (**i.e., inspection**) rather than consideration of other conformity assessment schemes. One possibility would be to recognise equivalence of other product certification schemes such as the IECEE CB Scheme for electronic products or the use of type approval. PVoC provides an unnecessary additional layer of inspection and certification – reputable manufacturers always certify their products. This negates the concept of *one standard, one test and one certificate accepted everywhere*.

3. **Non-risk-based scope:** The one-size-fits-all approach applied in the current system covers a vast scope of product groups which are subjected to PVoC without consideration of the proportionate risk. There is also no formal process to remove a product group under the scope of PVoC vis-à-vis risk and impact assessment, the proportionality of measures proposed for each product group or alternative measures.

4. **Cost:** There are two aspects with respect to cost. The first concerns single and irregular exporters/importers and small traders. The cost appears higher given the volume of the exporters as compared to bulk exporters. The second concerns the added cost due to multiple testing and certification. The fees charged under the PVoC programme do not include laboratory testing,

manufacturer licencing, registration fees, sampling of bulk shipments or re-inspection. This means that the importer has added costs that may not be necessary.

5. **Innovative products, products that do not have a standard and technical regulation:** Inappropriate product standards are applied to these products.

# 5. PVoC Stakeholders

## 5.1. Kenya Bureau of Standards (KEBS)

KEBS is the main stakeholder as it administers the PVoC programme on behalf of the Government of Kenya. The role of KEBS is to ensure that only goods meeting the requirements of the relevant Kenya Standards or approved specification enter the country as provided for in the Standards Act Cap 496, Laws of Kenya and the Standards (Verification of Conformity to Standards and other Applicable Regulations) Order, 2020.

KEBS is paid a percentage of the fees that are charged by the contracted PVoC agencies.

This represents a substantial source of income for KEBS. Therefore, it is in KEBS's interest to maintain the PVoC programme and to subject as many products as possible to PVoC.

## 5.2. Importers and exporters

The importer or exporter is needed to confirm the details in the CoC/CoR draft given by the PVoC contractor. If there are any queries, these must be cleared or corrected before issuance of the final CoC/CoR. KEBS will not accept any amendments after issuance of the CoC/CoR.

Many importers, manufacturers and trade associations have expressed concern that the pre-shipment inspection programme is causing significant delays to the import process into Kenya. Several companies have complained that urgent shipments now require days – rather than hours – to be processed. This group of stakeholders are the most hard hit by the high inspection fees.

For the importers, policy and institutional stability is lacking – KEBS has only gazetted four Legal Notices about the PVoC programme in the last 15 years. Three of these legal notices were gazetted between 2018 and 2020.

## 5.3. PVoC contractors

Since the start of PVoC, KEBS has been contracting international certification/inspection agencies to undertake PVoC activities. The contracts run for three years. Currently, six inspection companies (PVoC partners) have been contracted by KEBS:

**A: General goods**
1. China Certification & Inspection Group Co Ltd
2. China Hansom Inspection & Certificate Co Ltd
3. *Société Générale de Surveillance SA* (SGS)
4. TÜV Austria (Turk) Kenya Limited
5. World Standardization Certification & Testing Group (Shenzhen) Co, Ltd

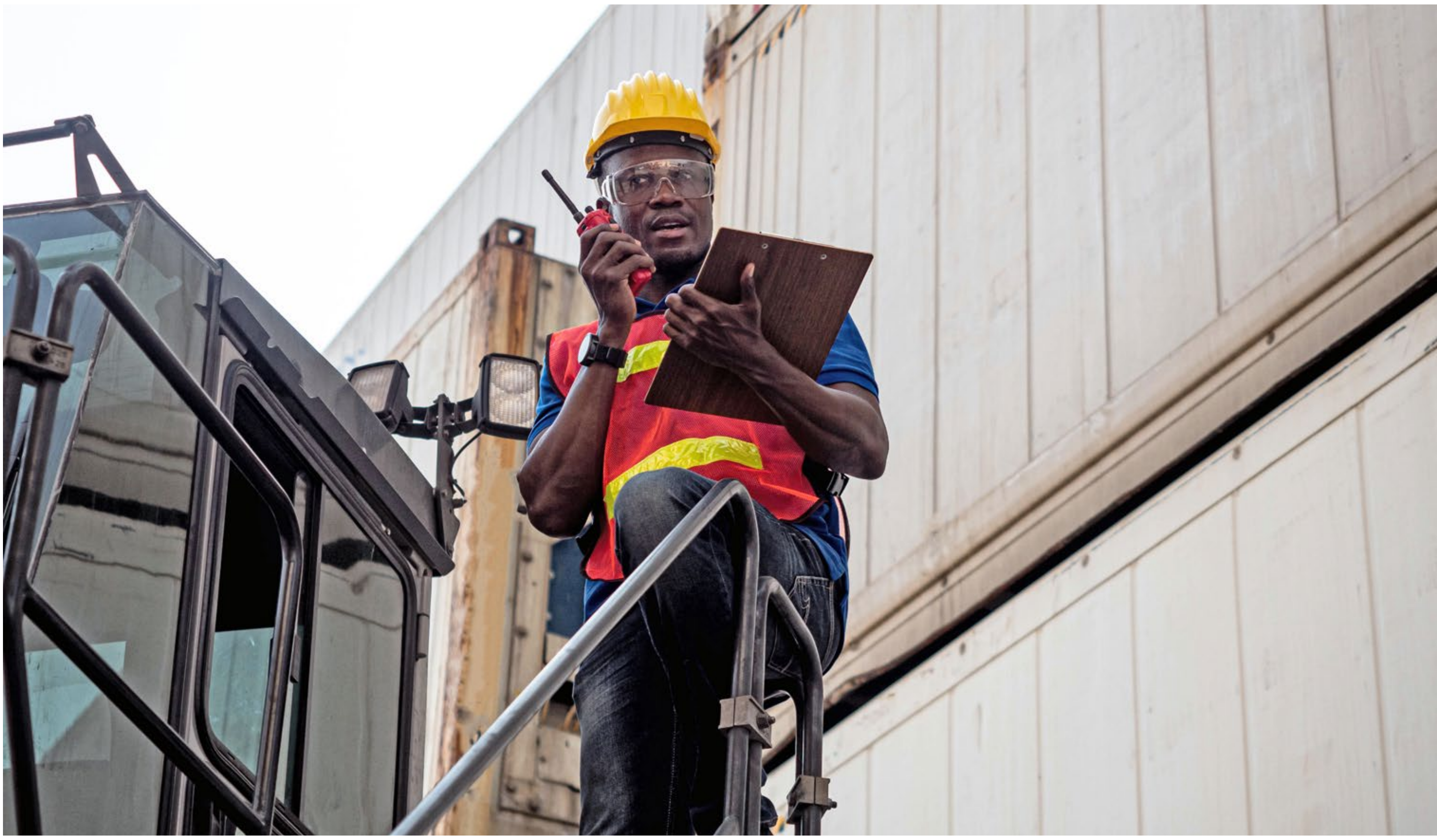
**B: Motor vehicles, motor vehicle spare parts and mobile equipment**
1. Quality Inspection Services Japan (QISJ)

The role of PVoC contractors is to undertake conformity assessment activities in the country of origin for general goods, motor vehicles, spare parts and mobile equipment being imported into Kenya. These activities include inspection, sampling, testing, sealing of full-load containers (where applicable) and issuance of CoCs/CoRs/NCRs.

The PVoC contractors benefit from increasing numbers of products being subject to PVoC. About 65,000 CoCs are processed annually at an average cost of USD 1500 per certificate; this translates to revenue of about KES 9.5 billion for agents. Approximately KES 2.6 billion is remitted to KEBS, leaving the larger percentage of the revenue to the PVoC contractors.

It is worth repeating that reputable manufacturers always certify their products. PVoC signifies an unnecessary additional layer of inspection and certification, which leads to delays in shipments being common to all. This means that there are also unavoidable added costs.

Generally, PVoC is also considered an unjustifiable barrier to trade.



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# 6. Possible Alternatives to PVoC

In looking at the possible alternatives to PVoC, the issue of proportionality of applications and regulatory reform assessment as well as the issue of choice of conformity assessment regime come into play.

## 6.1. Proportionality of applications of regulatory conformity assessment regimes

As stated in the advantages listed above, the PVoC programme as designed in 2005 set out to address the gap left by the exit of Kenya from its pre-shipment inspection regime to manage the dumping of substandard products that did not conform to Kenya Standards and related regulations.

However, since its inception, the PVoC programme has not been redesigned to take into account the emerging best practices in the application of conformity assessment regimes to various products or goods. The recent best practices include updated product certification schemes, risk assessment-based regulation and modern market surveillance practices. In effect, the PVoC programme still applies a one-size-fits-all conformity assessment regime rather than a proportionate regime that is dictated by the risk on products or goods. Therefore, it is viewed as an overly prescriptive and costly regime.

One of the proposed alternatives is for KEBS to redesign the PVoC regime to accommodate the following:

a) allowing for application of a proportionality rule to product risk context and imposing corresponding sanctions for infringement by traders (exports or importers);

b) providing a mechanism for regular review of risks vis-à-vis compliance assessment by various regulators and to determine whether to remove, vary or add new measures concerning product groups on the PVoC list;

c) allowing the appropriate level of regulatory confidence necessary to determine the type of conformity assessment regime (e.g., first level suppliers declaration of conformity (SDOC) for low risk, third level for high risk and proportionate selection of other conformity assessment requirements for moderate risks);

Supplier's Declaration of Conformity (SDoC) is a first-party certification or self-certification process by which a manufacturer or supplier declares that the product meets one or more standards based on (1) the manufacturer's confidence in the quality control system or (2) the results of testing or inspection the manufacturer undertakes or authorises others to undertake on his/her behalf. The manufacturer's capability, integrity and reputation determine the degree of confidence that can be placed in this type of certification. It is a market-driven approach that will result in the conformity assessment of greatest value. Confidence is the key for achieving this concept. Each product sector and country/region should allow the confidence needs and marketplace to determine the most effective CA mechanism(s). The competitive forces of the market should determine the viable choices. These may differ from one product sector to another.

The IECEE CB Scheme is the conformity testing scheme for the recognition of results of testing to standards for safety of electrical equipment. The scheme comprises an international data exchange network between certification bodies (CBs) and their testing laboratories in 34 countries. It allows a manufacturer to have testing results transferred from a laboratory in one country to a participating laboratory in another country. The purpose of the exchange is to obtain the conformity assessment mark needed for market access in the second country. A country's participation in CB Scheme product categories is predicated on its having a national standard based on the IEC standard with minimal deviations (harmonised standards). Benefits of the CB Scheme include the following:

- More rapid certification and product acceptance
- One-stop testing, even though certification/ product acceptance still must be obtained country by country
- Faster product movement from plants to markets
- Reduction of trade barriers
- Opening of new markets

a) allow traders or manufacturers to use alternatives to demonstrate compliance as long as the regulatory level of confidence is achieved or otherwise sanctioned appropriately;

b) foster competition by allowing the results of accredited conformity assessment bodies to be recognised as equivalent to fulfil the qualifications of PVoC partners; and

c) limit or reduce the designation or award of contracts to specific PVoC partners for a particular product group if other accredited conformity assessment schemes exist (e.g., the IECEE CB Scheme).

d) providing for recognition and acceptance of equivalence of other forms of conformity assessment such as the IECEE CB Scheme or other recognised accredited product certification schemes (KEBS is member of the IECEE and a recognising body of the IECEE CB Scheme) and

e) above all, taking account of emerging global best practice on good regulations.

KEBS/Kenya should participate in the IECEE CB Scheme (for electrical products) and similar schemes that address diverse types of products to achieve maximum test acceptance worldwide. Participation in these schemes will help eliminate redundant testing by permitting one test for all markets. This will also help eliminate the monopoly which currently exists within the PVoC programme.

## 6.2. Choice of conformity assessment regimes

As mentioned above, the PVoC regime adopted a monopolistic approach to use of conformity assessment services by geographical location (see Annexes A and B). The result of allocating (contracted) PVoC partners to a particular geographic location is a reduction in competition. Furthermore, a PVoC partner has a financial incentive to adopt a preferred approach (the most expensive) to achieve the intended result.

Once redesigned, the PVoC regime should no longer be restrictive in terms of reliance on a limited number of multinational companies. It is proposed that based on consideration of proportionality, the PVoC regime should rather:

# Annex A: PVoC Contractors by Zones/ Provinces of Responsibility

| Zone No | Countries/ Province in the zone | Contractors |
|---|---|---|
| 1 | China (Fujian, Guangdong, Guanxi, Hainan, Hong Kong, Taiwan) | World Standardization Certification & Testing Group (Shenzhen) Co, Ltd |
| 2 | China (Guizhou, Hunan, Jiangxi, Yunnan, Zhejiang) | CCIC |
| 3 | China (Anhui, Hubei, Jiangsu, Shanghai, Sichuan, Tibet) | TÜV Austria (Turk) |
| 4 | China (Gansu, Hebei, Henan, Qinghai, Shandong, Shanxi, Shaanxi) | CCIC |
| 5 | China (Heilongjiang, Inner Mongolia, Jilin, Liaoning, Mongolia, Ningxia, Tianjin, Xinjiang) | China Hansom Inspection & Certificate Co Ltd |
| 6 | India, Pakistan, Sri Lanka | SGS |
| 7 | Cambodia, Indonesia, Japan, Malaysia, Philippines, Singapore, South Korea, Thailand, Vietnam | SGS |
| 8 | Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela | SGS |
| 9 | Canada and the United States of America | SGS |
| 10 | Armenia, Azerbaijan, Belarus, Bulgaria, Czech Republic, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Lithuania, Poland, Russia, Slovakia, Tajikistan, Turkistan, Turkmenistan Ukraine, Uzbekistan | SGS |
| 11 | Cyprus, Greece, Malta, Portugal, Spain, Turkey | SGS |
| 13 | Austria, Belgium, France, Germany, Italy, Liechtenstein, Luxembourg, Netherlands, Switzerland | SGS |
| 14 | Denmark, Finland, Norway, Sweden | SGS |
| 15 | Bahrain, Iran, Iraq, Jordan, Lebanon, Kuwait, Oman, Qatar, Saudi Arabia, Syria, Yemen | SGS |
| 16 | United Arab Emirates | SGS |
| 17 | Lesotho, Mauritius, Mozambique, Namibia, South Africa, Swaziland | SGS |

# Annex B: Countries which are NOT Subject to the PVoC Programme

**Goods from these Countries are subjected to Destination Inspection**

| Zone No | Zone | Countries |
|---|---|---|
| 1 | Ireland and United Kingdom | Ireland and United Kingdom |
| 2 | Indian Subcontinent | Afghanistan, Bangladesh, Myanmar, Nepal |
| 3 | Far East | North Korea |
| 4 | Australia, New Zealand and Polynesia | Australia, New Zealand, Papua New Guinea, Polynesia Islands, Samoa |
| 5 | Former Soviet Union republics | Estonia, Latvia |
| 6 | Eastern Europe | Albania, Bosnia and Herzegovina, Croatia, Macedonia, Moldova, Montenegro, Romania, Serbia, Slovenia |
| 7 | Nordic countries | Iceland |
| 8 | Middle East | Israel |
| 9 | Maghreb countries | Algeria, Morocco, Western Sahara |
| 10 | North Africa | Chad, Djibouti, Egypt, Eritrea, Ethiopia, Libya, Sudan, Tunisia |

# Abbreviations and Acronyms

| | |
|---|---|
| CB | Certification Body |
| CBCA | Consignment Based Conformity Assessment |
| CBK | Central Bank of Kenya |
| CoC | Certificate of Conformity |
| CoI | Certificate of Inspection |
| CoR | Certificate of Roadworthiness |
| FOB | Freight on Board |
| GoK | Government of Kenya |
| IECEE | International Electrotechnical Commission System of Conformity Assessment Schemes for Electrotechnical Equipment and Components |
| JEVIC | Japan Vehicle Inspection Center Co Ltd |
| KEBS | Kenya Bureau of Standards |
| KRA | Kenya Revenue Authority |
| NCR | Non-Conformity Report |
| PCA | Product Conformity Assessment |
| PSI | Pre-Shipment Inspection |
| PVoC | Pre-Verification of Conformity |
| QISJ | Quality Inspection Services Japan |
| RFC | Request for Certification |
| SGS | Société Générale de Surveillance SA |
| TBS | Tanzania Bureau of Standards |
| TIC | Testing, Inspection and Certification |
| UNBS | Uganda National Bureau of Standards |
| VoC | Verification of Conformity |
| WTO | World Trade Organization |

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