

Interpreting the rules | Key sector outcomes

Rules of Origin in the AfCFTA: why do they matter, and where do they apply?

Rules of Origin (RoO) are legal provisions used to determine the nationality of a product in the context of international trade. Within a preferential trade area such as the AfCFTA, the RoO specify the conditions under which a product traded between the parties to the agreement can claim local 'economic' origin status and therefore benefit from the preferences offered by the AfCFTA. Products that can not demonstrate compliance must be traded on standard MFN terms, which often means much higher tariffs. This also illustrates the inter-relatedness between tariffs and RoO within a preferential trade area: the tariff advantages are only available to products that *originate* within the preferential trade area as measured by the applicable RoO criteria for such products.

THE RULES OF ORIGIN IN THE AfCFTA

The AfCFTA agreement includes a number of technical Annexes and Appendixes.

Annex I: AfCFTA tariff schedules

Annex II: AfCFTA Rules of Origin (main provisions)

- Appendix I: Certificate of Origin
- Appendix II: The prescribed text for purposes of origin (self) declaration
- Appendix III: Copy of the AfCFTA supplier declaration (to cover regional inputs for cumulation purposes)
- Appendix IV: The AfCFTA product-specific RoO criteria

HOW IS ORIGIN DETERMINED IN THE AfCFTA ?

The AfCFTA follows a general approach to RoO that is similar to the one used in various regional (REC) trade areas, the EU EPAs, and many others. Preferences are available only to products where it can be demonstrated that they are of the **economic origin** of one or more State Parties* of the AfCFTA. Broadly speaking, this approach requires that products are wholly produced in an AfCFTA State, or where non-originating inputs are used, that these are substantially transformed within the AfCFTA State Party (or Parties, under the cumulation provisions).

* A Member State is a country that has ratified or acceded to this Agreement and for which the Agreement is in force

WHOLLY OBTAINED

OR

SUBSTANTIALLY TRANSFORMED

Possible RoO methodologies

CTH

Processing resulting in a change in tariff heading

%

Meeting a value or content percentage threshold

SP

Undertaking specific prescribed processing

AfCFTA 'ORIGINATING'

Determining ORIGIN : key steps

► Identify the product's HS classification

It is essential to identify the **correct HS classification** for the product, as this is needed to look up the relevant RoO criteria, as well as for the compulsory customs paperwork. Incorrect classifications can hold up the trade process and result in penalties.

► Which export market destination?

The AfCFTA RoO and tariffs relate to trade between AfCFTA State Parties that do not already trade with one another on a preferential basis within an existing REC arrangement, having its own RoO and tariff schedules.

► Is the product wholly obtained in one country?

The AfCFTA RoO consider products wholly obtained or produced in a State Party to be of local origin. The criteria for wholly obtained are listed under Art. 5 of Annex II.

► Does the product contain any imported materials?

When a product is not 'wholly obtained' but contains imported materials from any non-AfCFTA third countries, or where the origin of some of the inputs used cannot be established and proven, then these materials must be substantially transformed in accordance with the provisions known in the AfCFTA as 'sufficient processing'.

► Determine the product-specific RoO

What is considered sufficient transformation is derived from the product rules in Appendix IV to the Annex II on Rules of Origin. The HS tariff code (step 1 above) must be used to look up the relevant local processing rules in Annex II, read in conjunction with the remaining general RoO provisions of Annex II.

► What about 'processing not conferring origin'?

A product obtains local origin status by virtue of being wholly obtained (Art. 5 of Annex II) or substantially transformed (Art. 6 of Appendix II), and the product rules of Annex IV. If the product rules are complied with, it is nevertheless essential to ensure that the processing that was undertaken goes **beyond** those listed as 'processing not conferring origin' (Art. 7 of Appendix II). These provisions ensure that simple operations do not on their own confer origin, and deal with some of the weaknesses and unforeseen scenarios that may not be adequately covered by the product rules.

► Is cumulation relied on in the determination of origin?

The cumulation provisions of the AfCFTA (Art. 8 of Annex II) allow all the State Parties of the AfCFTA to be considered as a **single territory for origin purposes**. Any processing or inputs originating in another AfCFTA State Party will be considered as originating in the country where the final processing was completed, provided that this final processing goes beyond the 'processing not conferring origin' listed in Art. 7 (see the previous point). It is not necessary that the materials and processing undertaken in the final exporting country (claiming origin status for the product) fulfils the product-specific RoO obligations in their entirety on its own, provided that the processing and materials of all the AfCFTA State Parties taken together fulfils these RoO requirements.

► What about packaging and spare parts?

Packaging is normally considered an integral part of the product and not treated separately for origin purposes, **unless** a particular State Party normally treats goods separately from their packaging for customs duty purposes. Spare parts, tools and accessories dispatched with a machine or equipment, included in the price and normally part of the equipment, is regarded as one with the equipment and origin need not be separately determined.

► Provisions around transportation

Originating products shipped from one State Party to their final destination may travel via other State Parties' territories provided that during transit (and any temporary storage necessary) the goods remain under the supervision of the relevant Customs authorities.

► RoO paperwork

The AfCFTA contain a number of information and paperwork requirements that must be adhered to. **See details on the following page.**

► Submitting proof of origin

Proof of origin (by means of a certificate of origin) that has been issued in accordance with the required provisions must be submitted to the designated Competent Authority in the importing party, which will keep the certificates for a period of at least 5 years.

Proof of ORIGIN : information requirements and paperwork

▶ What paperwork is required to prove origin status?

The proof of origin requirements are set out in **Part III of the Annex II** on RoO. An exporter of a shipment of goods claiming preferential AfCFTA origin status must complete a certificate of origin (see next point) and have this authenticated by the designated local competent authority. Proof of origin is a critical aspect of trading under AfCFTA preference, and various provisions are of direct relevance to traders.

▶ Certificate of origin in the AfCFTA

A certificate of origin in the required format (**Appendix I of Annex II**) is generally required as proof of origin. It is completed by the exporter and submitted to the local designated competent authority, along with any relevant supporting documentation if required, for authentication and verification purposes.

Supporting documentation may include information on production processes, costs and sources of input materials and processing, details of shipping, and payment for the product, etc.

▶ When is a certificate of origin not required?

An AfCFTA certificate of origin is not required in certain situations, either in cases where an **origin declaration** (see next point) is acceptable as proof, or where an **exemption from any proof of origin** (Art. 28) is permitted. Exemptions relate to small packages occasionally sent between private persons (worth up to \$500), or goods forming a part of travelers' luggage (up to \$1,200).

▶ Origin declarations

Origin declarations are **written statements made by the exporter**, bearing the original signature of the exporter, self-declaring the local origin status of the product concerned. The prescribed wording for such origin declarations is provided in Appendix II of Annex II. Origin declarations may be made out only (a) by **approved exporters** (Art. 20), or (b) for **low-value shipments** whose total value is less than \$ 5,000 (Art. 19). Origin declarations must be submitted no longer than 12 months after importation of the products to which they relate. Origin declarations do not exempt an exporter from furnishing appropriate supporting documents at the request of the designated competent authority.

▶ Benefits of being an 'approved exporter'

Under the AfCFTA, 'approved exporter' (Art. 20) status may be granted to 'frequent' exporters by the State Parties' designated local competent authority, provided that the exporter is able to guarantee compliance with all the relevant RoO provisions and subject to any other conditions imposed by the authority. The exporter is then issued an authorisation number which must appear on any origin declaration made out. An **approved exporter** may then make out **origin declarations** (self-declare origin status) regardless of the value of the goods covered, and need not obtain a certificate of origin.

▶ Certificates issued in duplicate or retrospectively

Origin certificates are required by the importer to prove, on importation, that the product covered by the certificate originates in the exporting country and qualifies for preferential entry. In certain situations, a duplicate certificate is required when the original is lost or destroyed; this may be issued by the designated authority in the exporting country on application by the exporter, and must be marked 'DUPLICATE' (Art. 25).

In exceptional situations, for example due to errors or special circumstances, or when it was not accepted by the designated competent authority on importation on technical grounds, the exporter can apply to the designated competent authority in the exporting country for a new certificate to be issued retrospectively. It must then be marked 'ISSUED RETROSPECTIVELY' (Art. 23).

RoO Negotiation status quo

As of July 2021, 86% of the AfCFTA RoO provisions have been agreed, while negotiations on the outstanding* rules are expected to conclude soon.



* The 14% (rounded) in outstanding issues comprise: **Scattered issues: 2%; Textiles: 10.5%; Automotive: 1.4%**
By July 2021, 28 tariff offers had been certified by the AfCFTA Secretariat as meeting the 90% threshold. **A 3-month extension to allow for the conclusion of RoO negotiations for textile products is being considered.**

When does trading under the AfCFTA begin?

A decision was made by the Heads of State of the African Union, in December 2020, that there would be an indicative start of preferential trade under the AfCFTA from the beginning of January 2021 in those tariff lines where both the RoO and tariffs have been agreed. Members of existing RECs will continue to trade under the REC agreements.

AfCFTA RoO Sector Focus

What are some of the product rules that have been agreed (and not agreed)? What are some of the underlying issues?

Chapter 03 and parts of 16 *Fish, molluscs, crustaceans*

Rules partly agreed

A key issues that was only resolved towards the end of the negotiations centered on the criteria relating to fishing vessels and factory ships (flag, nationality of officers, ownership etc.). These issues apply only to fish caught outside of the 12-mile territorial sea; any fish caught inshore, or in rivers and lakes, is automatically originating in the country where it is caught. While it has been agreed that fish of Chapter 3 should be wholly obtained to be qualifying, outstanding issues pertain to processed fish of Chapter 16, as well as salted snoek.

Rules agreed

Chapter 09 *Coffee, tea, mate, spices*

The agreed rules require that all materials of Chapter 9 must be wholly obtained in an AfCFTA State Party. This means that non-originating materials are not allowed, for example raw coffee beans (to produce a coffee made of coffee beans from African and other countries), tea leaves (for example 'English breakfast tea', traditionally produced from Kenyan, Indian and Sri Lankan tea varieties), or mixtures of spices (that include inputs from Asian countries). A potential source of leeway will be through the *de minimis* / *value tolerance* provisions, yet to be finalised, which often allow small quantities of non-originating inputs to be used, effectively as a derogation from the standard RoO requirements.

Chapter 24 *Tobacco and manufactured tobacco substitutes*

The chapter rule has been agreed and requires that all materials of Chapter 24 be wholly obtained. The rules for ex HS2402 (cigars, cigarettes) and for ex HS2403 (other manufactured tobacco products) have not been agreed; a key issue will be whether tobacco blended from originating and non-originating sources (in order to achieve a specific flavour profile) will be permitted and considered sufficient for the production of originating cigarettes, or whether all tobacco inputs must also be wholly obtained. **By comparison, in the SADC FTA up to 30% of the tobacco used may be from non-originating sources. A current AfCFTA consideration is to adopt a Wholly Obtained rule with a certain percentage tolerance by weight of imported tobacco.**

Rules partly agreed

Rules not agreed

ex Chapter 87 *Motor vehicles, parts, accessories*

Different forms of manufacturing or assembly can result in a built-up motor vehicle, and a key issue that must still be agreed is what specific activity or value-addition threshold would confer AfCFTA origin. Should, for example, the local assembly of an imported semi / completely knocked-down (SKD / CKD) vehicle kit confer origin status, or should a maximum threshold on non-originating materials (VNOM) be used as a more appropriate RoO requirement? Would a higher local content rule help develop an African value chain or should more flexible rules be agreed to better facilitate sourcing of international inputs and components?
A compromise position of 60% VNOM (transitioning to 50% over 5 years), with clear definitions of what will constitute manufacturing and assembly, is being considered.

Parts of Chapter 50-63 *Textiles, clothing, household textiles*

Only a small number of tariff lines in Chapters 50-63 - representing the textiles and clothing sector - have RoO criteria agreed. This includes yarn made of silk, jute or flax, carpets, woven fabrics of metal thread, as well as a few others. For most fabric, articles of clothing and household textiles (such as curtains, bed linen) the RoO have yet to be agreed. The key issue, in effect, involves agreeing on the number of distinct stages of (local) transformation that would confer AfCFTA origin. For clothing, this means whether assembly of the garment from imported non-originating fabric confers origin (the so-called third country fabric criteria), or whether the fabric itself must also be from local sources (a double-transformation criteria). For fabric, the question similarly is whether imported yarn may be used for onward processing, or whether both the fabric processing and the yarn production must take place within the AfCFTA State parties in order for the resulting products to obtain AfCFTA origin status. **To help finalise RoO negotiations, dedicated workshops on textiles and a 3 month extension to conclude the negotiations are being considered.**

Rules partly agreed

ex Chapter 40 *Rubber and articles of rubber*

The AfCFTA RoO offer two alternative criteria for obtaining origin status: processing that results in a change in tariff heading CTH, or alternatively, processing whereby the value of non-originating materials used does not exceed 60% of the factory selling price of the product. **SADC FTA RoO, in contrast, require a CTH, while COMESA FTA RoO are also based on a CTH requirement albeit with additional restrictions.**

Rules agreed

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