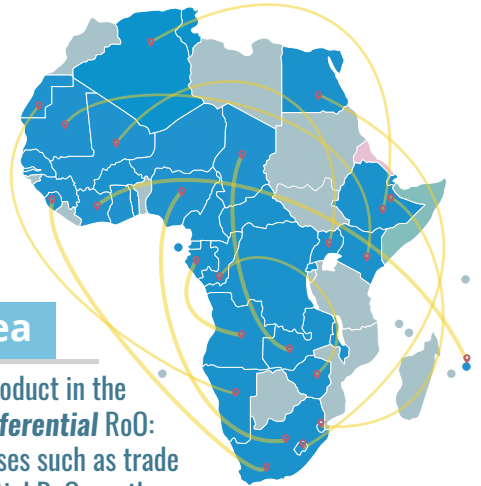


Introduction to the AfCFTA RoO:

- *Key provisions, sectoral approach and outstanding issues*

The AfCFTA: From concept towards reality

The African Continental Free Trade Area (AfCFTA) is an ambitious undertaking that aims to eventually bring together 55 African countries with a combined 1.3 billion people to create the world's largest free trade area, as measured by number of Member States. Its objective is to create an integrated market for the trade in goods and services, as well as the free movement of people and capital.



- AfCFTA Agreement signed, ratification deposited
- AfCFTA Agreement signed
- Confirmation of parliamentary approval pending
- AfCFTA Agreement not signed

The role of Rules of Origin in a preferential trade area

Rules of Origin (RoO) are legal provisions that are used to determine the nationality of a product in the context of international trade. A distinction can be made between **non-preferential** and **preferential** RoO: non-preferential RoO involves national laws used to allocate origin to traded goods for purposes such as trade statistics, trade remedies, labelling requirements and various other purposes, while preferential RoO are the regulations contained in the agreements of preferential trade areas between two or more countries (such as those forming part of the AfCFTA), and which prescribe the minimum amount of processing and other criteria that must be complied with in order to make a determination on the **preferential trade status** of a product.

- ▶ Each product that is traded **under the AfCFTA** scheme must therefore meet the relevant criteria set by the **AfCFTA RoO**

WHAT APPROACH DOES THE AfCFTA FOLLOW FOR DETERMINING ORIGIN STATUS ?



The **AfCFTA RoO** are essentially being negotiated on a **sector by sector level**, resulting in **product-specific origin rules** (rather than generic origin criteria that apply equally to all products). The advantage of this is that suitable criteria can be designed that better take account of the specific dynamics of each sector; however, this process also means that negotiations are more complex and time consuming. The general RoO provisions contained in the main RoO Protocol (Annex II) however apply equally to all products.

The **economic origin** of a good is determined based on whether it is the 'growth, product or manufacture' of the exporting country (or of any other particular country); this generally means that it is made up only of local inputs, or in the case of goods extracted from the soil or sea bed, or agricultural products, is extracted, grown, harvested or otherwise obtained locally. Such products are then referred to as being '**wholly obtained**' in the country of origin.

WHOLLY OBTAINED GOODS

or

SUBSTANTIALLY TRANSFORMED GOODS

If a product claiming origin status for purposes of benefiting from AfCFTA preferential market access includes materials sourced from non-AfCFTA countries, then it must first be proven that any non-originating inputs have been **substantially transformed** locally. For this, the producer or exporter must consult the **AfCFTA RoO**. These rules set specific criteria that, for each product, represent 'substantial transformation', and can be based on one or more of the three methodologies listed below.

Description

This methodology uses percentage thresholds as criteria to determine origin status. The AfCFTA RoO, where applicable, set a percentage-based upper limit on the amount of *imported* materials that may be used.

RoO methodology

PERCENTAGE

Also known as the 'technical' test, this methodology, frequently used in the AfCFTA, sets product-specific processing conditions that must be fulfilled in order to obtain origin status.

SPECIFIC PROCESSING

Where products use any non-originating materials, the local processing must result in a product that becomes classified under a new HS classification.

CHANGE IN TARIFF CLASSIFICATION

WHAT ABOUT CUMULATION ?

Cumulation of origin is an important part of the AfCFTA RoO. These provisions allow countries party to the agreement to **jointly fulfil** the RoO criteria in a shared value-adding arrangement, thereby reducing the burden on individual producers while encouraging the development of regional value chains. Inputs sourced from and originating in other Member States then count as local inputs when further processed.

WHICH RULES OF ORIGIN WILL GOVERN INTRA-AFRICAN TRADE?



The AfCFTA recognises existing regional economic communities (RECs) and these continue to remain in place and function as before; in other words, the AfCFTA does not abolish or replace these. For any trade that takes place among countries that are party to such an arrangement, the pre-existing tariff regimes and associated regional Rules of Origin provisions and associated preferences will continue to apply. The AfCFTA therefore adds a preferential trade regime for trade between countries where trade previously took place on a standard MFN basis, in other words, without any special preferences being available. The RECs in turn are seen as the building blocks of the AfCFTA.

- **Trade within existing RECs / Free Trade Areas (e.g. SADC, COMESA, ECOWAS, ECCAS):**
 - Established RoO and tariffs of these RECs will continue to apply to intra-regional trade
- **Trade between countries not in an established REC relationship (e.g. South Africa-Kenya; Ghana-Ethiopia etc.):**
 - New AfCFTA RoO and tariffs apply, as negotiated (in tariff lines and RoO, where agreed and implemented)

What is the status of the RoO negotiations?

- Trade under the AfCFTA was set to begin on 1 January 2021
- Negotiations on RoO and tariff schedules are ongoing
- Impacts countries that did not previously trade with each other on preferential terms

- 37** Ratifications deposited *
 - 86%** RoO agreed *
 - 41** Countries' tariff schedules submitted
- * As of May 2021

A decision was made by the Heads of State of the African Union in December 2020 that **trade under the AfCFTA should officially begin on 1 January 2021**, between AU Members that have become State Parties to the AfCFTA and which previously traded with one another on standard MFN terms. This would apply to goods for which RoO have been agreed and at tariffs provided for in the respective tariff offers made by the State Parties, provided that these offers are compliant with the agreed modalities for the tariff negotiations.

It is important to note that the RoO negotiations, and final tariff schedules (these are negotiated on a reciprocal basis between the countries or RECs respectively), had not been fully agreed as of the indicative start of trading at the beginning of 2021. What this means for traders is that preferential trade outside of the established RECs can only happen in those tariff lines where both the *RoO and preferential tariffs have already been agreed* (provided that the tariff offers comply with the negotiating modalities). It is anticipated that the RoO negotiations and outstanding tariff offers will be completed by mid-2021.

RoO: Outstanding general provisions*

AfCFTA Annex II on RoO

- ▶ **Definitions:**
Clarity around the concept of 'value added' and how it will apply in the RoO
- ▶ **Treatment of goods produced in special economic zones:**
Export processing zones often involve special competitive benefits for producers
- ▶ **Value tolerance (de minimis) provisions:**
Common provision not currently included; value tolerance provisions provide a small measure of leeway to producers to allow for minor deviations from the standard RoO
- ▶ **Treatment of goods produced in special economic zones:**
Export processing zones often involve special competitive benefits for producers
- ▶ **Absorption (roll-up) principle:**
Common provision that allows non-originating materials contained in intermediate products to be considered 'originating' when calculating local content once transformed into a different final product

RoO: Outstanding sector rules*

* As of early May 2021

Appendix IV to AfCFTA Annex II on RoO

- ▶ Wheat Flour
- ▶ Certain fish products (snoek; parts of prepared fish of Ch 16)
- ▶ Certain dairy products (buttermilk, cheese)
- ▶ Certain animal or vegetable fats (sunflower oil, etc.)
- ▶ Sugar
- ▶ Certain juices ('other' and 'mixed' juices)
- ▶ Certain tobacco products (cigars, other tobacco products)
- ▶ Articles of leather (incl. travel goods, handbags)
- ▶ Textile fabrics (most fabric, and some yarns)
- ▶ Clothing
- ▶ Household textiles (most tariff lines outstanding)
- ▶ Motor vehicles and parts

How will a trader determine the origin status of a product? Key steps:

- What is the export destination? If it is part of the same REC, then those RoO (not AfCFTA RoO) apply
- Know the correct HS code for the product
- Consult the product-specific RoO (Appendix IV)
- Consult the general RoO provisions (Part II of Annex II)

- Is the product made from local inputs only? [*wholly obtained provisions*]
- Have inputs been sourced from other AfCFTA Member States? [*cumulation / info procedures*]
- Does all the local processing combined go beyond 'insufficient operations'? [*Art. 7*]

The AfCFTA RoO are included as Annex II to the AfCFTA agreement (Annex I covers the import tariff concessions.). Parts I and II of Annex II contain the general provisions, including provisions such as the criteria for 'wholly obtained', cumulation, origin declarations, simple/insufficient processing, key definitions, and others.

The RoO Annex also contains a number of Appendixes:

- Appendix I: A sample copy of the Certificate of Origin
- Appendix II: The text of the origin (self) declaration [*for shipments by approved exporters*]
- Appendix III: A sample AfCFTA supplier declaration [*to cover regional inputs*]
- Appendix IV: The AfCFTA product-specific RoO criteria

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