



ECONOMIC
DEVELOPMENT IN

AFRICA

REPORT 2019



Made in Africa

Rules of origin for enhanced
intra-African trade



Economic Development in Africa Report 2019

Made in Africa – Rules of Origin for Enhanced
Intra-African Trade



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Chapter 4

The rules of the game: Implementation of rules of origin

4.1 The African Continental Free Trade Area and the implementation of its rules of origin

This chapter builds on the previous chapters, which focus on the main issues relating to the economic dimension of preferential rules of origin in Africa and specific case studies on how distinct rules of origin provisions affect the working of selected regional value chains. There are both benefits and costs to having rules of origin. The rules of the game are based on cost–benefit analysis and are likely to vary across countries and sectors. Some of these have been illustrated in the case studies presented in chapter 3, which also highlights elements of the complex political economy of designing rules of origin (Draper et al., 2016). Moreover, there is evidence that the outcome is mixed with regard to regional value chains, even when beneficiaries utilize preferences (Boffa et al., 2018).

EFFECTIVE IMPLEMENTATION OF RULES OF ORIGIN REQUIRES:

1

Easing **documentary**
procedures



Establishing **committee(s)**
on rules of origin

2

3

Ensuring **transparency**



Setting up **dispute-**
settlement mechanisms

4

There is a risk that varied commercial interests may enter into the framing of rules of origin. Trade policy is complex, technical, detailed and often associated with domestic competition between firms. This is why the negotiation of trade agreements is invariably driven by national economic interests, market dynamics and domestic policy. In other words, priority sectors, market opportunities and the balancing of offensive and defensive priorities are important considerations in the political economy of trade (White and Case, 2016). The design of rules of origin in the Continental Free Trade Area might awaken lobbying campaigns that mostly elude public attention. The domestic constituents generally most favourable to free trade agreements differ in their preferences of rules of origin. For example, industries with large returns to scale tend to favour strict rules of origin to gain economies of scale in a free trade agreement, while industries with multinational supply chains tend to prefer lenient rules of origin to accommodate offshore procurement. Chase (2008) finds that the more restrictive rules of origin, the higher the external trade protection and the larger the potential returns to scale. In contrast, the more lenient the rules of origin, the greater the involvement in foreign sourcing. Highly protected industries are more likely to favour more restrictive rules of origin to alleviate adjustment costs from trade liberalization in a free trade agreement. Industries with large returns to scale tend to prefer stringent rules of origin to deter competition and a fragmenting of a free trade agreement by foreign firms, hindering cost reduction. On the other hand, industries dependent on offshore procurement tend to prefer lenient rules of origin to facilitate the sourcing of foreign inputs (Chase, 2008; White and Case, 2016). To the extent that conflicting national preferences are traded off in international and interregional economic community negotiations, industry lobbying at home may have less influence on the terms of the Agreement Establishing the Continental Free Trade Area. Nonetheless, rules of origin are critical to building domestic coalitions for the Continental Free Trade Area, and industry preferences concerning rules of origin may have important political implications for the ratification and implementation of the Agreement.

This chapter discusses the implementation of rules of origin. The following key elements should be addressed: the need to expand cumulation to facilitate compliance with origin requirements and to improve documentary requirements, the functioning of committees on rules of origin, transparency and dispute-settlement mechanisms.

The Agreement Establishing the African Continental Free Trade Area has been signed by most African countries, but the rules of origin have not yet been finalized. Rules of origin, together with the tariff reduction schedules of the signatories, should enable Africa to eliminate most tariff barriers in intra-African trade. Under the Agreement, the member

States reaffirm their rights and obligations under other trade agreements to which they are parties. Similarly, two of the principles outlined in article 5 of the Agreement refer to the free trade areas of the regional economic communities as building blocks for the Continental Free Trade Area and recognize best practices in these communities. The text of the Agreement goes even further to guarantee the “acquis” obtained in the regional economic communities. Thus, the Agreement is not intended to be a substitute for the regional agreements that are in place or under negotiation (i.e. agreements establishing the Tripartite Free Trade Area).

4.1.1 State of play of rules of origin implementation within the African Continental Free Trade Area and status of negotiations

The Agreement Establishing the African Continental Free Trade Area consists of the protocols on trade in goods, trade in services, investment, intellectual property rights, competition policy, and rules and procedures on the settlement of disputes and their associated annexes and appendices. Rules of origin are covered in annex 2 of the Protocol on Trade in Goods. Phase I negotiations on the Protocol on Trade in Goods, the Protocol on Services and the Protocol on Rules and Procedures of the Settlement of Disputes have been under way since March 2018. The five agreed priority sectors for trade in services are transport, communications, tourism, finance and business. In December 2018, African Union Ministers of Trade met in Cairo to finalize the modalities of tariff liberalization and the draft negotiating guidelines for schedules of specific commitments and regulatory frameworks for trade in services. Schedules of tariff concessions were to be finalized and approved by member States by December 2019. The Ministers of Trade took note of progress made towards the development of appendix IV to annex 2 on rules of origin and instructed senior trade officials to finalize outstanding work on rules of origin by the end of June 2019. This includes drafting hybrid rules and regulations for goods produced under special economic arrangements or zones. Phase II negotiations on competition policy, investment, intellectual property rights and draft protocols are due for submission to the African Union Assembly for adoption in January 2020.

In the Agreement, the member States reaffirm their rights and obligations under other trade agreements to which they are parties. Table 6 summarizes the status of regional economic integration in each of the eight regional economic communities recognized by the African Union. The communities are progressing at different speeds across the various components of the Abuja treaty; EAC has made the most progress.

Table 6
Progress towards economic integration in Africa

REGIONAL ECONOMIC COMMUNITIES	DATE ESTABLISHED	FREE TRADE AGREEMENT	CUSTOMS UNION	SINGLE MARKET	MONETARY UNION	POLITICAL FEDERATION
AMU	1989	Planned	Planned	Planned	Not planned	Not planned
CEN-SAD	1998	Planned	Planned	Planned	Not planned	Not planned
COMESA	1994	Achieved	In progress	Planned	Planned	Planned
EAC	2000	Achieved	Achieved	Achieved	Planned	Planned
ECCAS	1983	Planned	Planned	Planned	Not planned	Not planned
ECOWAS	1975	Achieved	Achieved	Planned	Planned	Planned
IGAD	1996	Planned	Planned	Planned	Not planned	Not planned
SADC	1992	Achieved	Achieved	Planned	Planned	Planned



Source: United Nations Economic Commission for Africa et al., 2017.

Governments agreed to build-upon the “acquis” of the regional economic communities. Consequently, African exporters would be able to choose which agreement to use, depending on the concessions and rules of origin they need to comply with. Zambian exporters for instance could either use the rules of origin of COMESA, SADC, the Tripartite Free Trade Area or the African Continental Free Trade Area, depending on the final destination of the products. This raises two key considerations. On the one hand, the assurance to other Members that they can retain their regional agreement is an incentive to making the Agreement Establishing the African Continental Free Trade Area acceptable. It also makes it unnecessary to seek an overarching impact, as they would feel comfortable in their regional economic community. On the other hand, this assurance depends on whether the negotiated rules of origin enable or hinder preferential trade across Africa.

The Continental Free Trade Area must prove that it can complement – not threaten – the regional economic communities or become an empty shell. This will facilitate its implementation. The Continental Free Trade Area will have to ensure that it is the main alternative, above all in countries that are part of a regional economic community, while also enabling trade with other countries that are not in the same regional economic community. Thus, the Continental Free Trade Area can also benefit from established experience in the regional economic communities, as many private sector operators

have already learned how to work within free trade agreements and regional trade agreements.

Regional economic community secretariats may also be helpful in implementing the Agreement. With additional skilled labour, the Continental Free Trade Area could create a focal point in each regional economic community secretariat to help build the necessary national capacities of member States. This would ensure that the instruments of the Agreement are implemented and work more effectively with the regional economic communities and other regional entities.

The WTO Agreement on Trade Facilitation and the establishment of national committees on trade facilitation should help facilitate trade among all members, as with the national implementation committees that would be formed under the Agreement Establishing the African Continental Free Trade Area. It could be argued that national committees on trade facilitation and national implementation committees could be grouped together or merged to fully exploit synergies, enabling focused discussions among the same stakeholders in a country, as well as to harmonize inputs and outputs, and target such stakeholders with more effectively coordinated technical assistance.

4.2 Expanding cumulation to facilitate compliance with origin requirements

4.2.1 Cumulation of origin, cross-cumulation and principle of territoriality

Cumulation may present the main opportunity for African countries to use African inputs. Regional agreements per se allow for cumulation with inputs from the same regional grouping and consider such goods as produced in the last country of manufacture (mostly, going beyond a minimal operation). A distinction can be made between bilateral and full cumulation. An additional option for cumulation could be explored. For example, the Protocol on the COMESA Rules of Origin⁵⁴ could be revised to consider cross-cumulation options, meaning the incorporation of materials from other non-African trade partners, if the specific trade pacts exist. This could allow for the integration of materials from, for example, the European Union, EAC or SADC.

The use of materials from EAC and SADC may be partially covered by the Tripartite

⁵⁴ Rules of Origin for Products to be Traded between the Member States of the Common Market for Eastern and Southern Africa.

Free Trade Area, which brings together COMESA, EAC and SADC. However, rules of origin negotiations have yet to be concluded. The main idea behind cross-cumulation is to allow for the use of materials in the production of goods that are not covered by the COMESA Agreement, but would nonetheless be granted duty-free treatment if they were shipped directly from another partner country. For instance, the new 2015 EAC rules of origin allow for cross-cumulation with inputs from COMESA and SADC. Further, EAC allows for cumulation with European Union inputs, as countries of the Community have concluded economic partnership agreements with the European Union. The advantage of having cross-cumulation in the Protocol on the COMESA Rules of Origin means that producers do not need to wait for the conclusion of the rules of origin negotiations under the Tripartite Free Trade Area. Further, within COMESA, there is no need to have longer negotiation rounds with other parties, should the rules require modification.

Introducing the concept of cross-cumulation also solves another problem – the need to fully align rules of origin in all agreements. Through the protocol on the rules of origin, agreements can be linked more easily and provide producers with an ample choice of competitive inputs, to enhance regional integration and trade. Several economic partnership agreements concluded between the European Union and African, Caribbean and Pacific countries also have comprehensive accumulation and cumulation possibilities for the promotion of regional integration.

The implementation of the Agreement Establishing the African Continental Free Trade is important, but once implemented, the rules of origin should be applied in realistic conditions. The impact of the Agreement depends on how the general rules of origin for Africa are drafted, whether they allow for full cumulation or not. Theoretically, the Agreement does not require cumulation options, as it includes all African nations to form the biggest regional agreement to date. However, high overland transport costs may be a barrier to intra-African trade along the value chain and may therefore inhibit the scope for cumulation.

The rules of origin will not be the same as those of other regional agreements, and this raises the question of how best to deal with potential inconsistencies in the determination of origin. Firms will apply, wherever more favourable, the more liberal rules of origin or better cumulation rules applicable, in regional agreements such as those of COMESA, ECOWAS and SADC.

Cross-cumulation should be compatible with article XXIV, paragraph 4 of the General Agreement on Tariffs and Trade (1947), which states that a customs union or a free trade area should contribute to the facilitation of trade between the constituent territories and

not raise barriers to trade with other countries. Critics such as Weiler et al. (2016) argue that cumulation schemes extend preferences of individual preferential arrangements to non-participating parties without any legal basis and in this way, may discriminate against third parties. Nevertheless, such criticism has not led to a legal dispute at WTO.

4.2.2 Certificate of non-manipulation, direct transport, drawback and tolerance rules

To enhance pan-African trade, rules of origin could allow for the trans-shipment of originating goods, even though producing and exporting countries might not be the same. Therefore, it should be possible, for example, for a Nigerian trader to export duty free not only Nigerian goods but goods from other African countries as well.

The system would then work along the lines of the diagonal cumulation provisions in place in Europe. Diagonal cumulation eliminates the need for direct transport, and all countries of the Pan-Euro-Mediterranean Convention grant each other preferential treatment, even where goods are not exported from the country of manufacture. This makes the Pan-Euro-Mediterranean Area a single market. However, two conditions pertain: there must be an uninterrupted chain of proofs of origin, and the preferential treatment granted upon importation is still based on the original tariff-dismantling commitments.

To facilitate re-export and trade, countries should allow for drawback of the customs duties upon re-export of third-country components integrated into the final product. Also, if finished goods are traded, and the exporting country has not fully implemented the tariff liberalization system, drawback should be allowed on the preferential duties paid.

Further liberalization could be allowed, in connection with the change in tariff classification rule. Indeed, most origin systems contain a tolerance or *de minimis* rule, allowing for a certain percentage of the product not meeting the change in tariff classification rule. This gives firms and producers some needed flexibility where the Harmonized System might classify inputs and final products under the same heading.

4.3 Documentary requirements and compliance costs

4.3.1 Certificate of origin and electronic versions

Electronic certification enables exporters to submit their applications electronically for the issuance of certificates of origin. It implies that the exporter also submits the relevant documentation (for example, import and manufacturer declarations, certificates of origin of inputs used) or will deposit them during the initial stage of application to obtain the authorization to acquire an electronic certification facility. In advanced and interlinked management systems, both the application and issuance of certificates of origin could be completed electronically.

The COMESA electronic certificate of origin system prototype was designed and developed in line with the COMESA Treaty, customs management regulations and the Protocol on the COMESA Rules of Origin with a view to establishing a standardized regional electronic certificate of origin system. The system consists of the following:

- End-to-end procedures for exporter registration and renewal
- Application and issuance of certificates of origin
- Checking and verification of certificates of origin
- Registration and circulation of designated issuing authorities and their authorized signatories
- Other relevant information.

The electronic certificate of origin system is a web-based system that is accessible through web browsers; the layout is practical and follows the necessary steps. The content has been carefully adapted to meet the requirements of the Protocol on Rules of Origin and ordinary certification processing, which, in the electronic version, is highly detailed. The first-time registration process for exporters appears to be cumbersome, involving the sharing of much information (from business operations to tax registration, and so forth). However, once registered, the exporter can simply complete the application form and submit the export documentation in electronic form.

Electronic certification provides good security and traceability; customs administrations, mostly in charge of imports, prefer such a method over self-certification. The electronic certificate of origin system would also make it unnecessary to use paper-based notifications or obtain stamps and signatures from the issuing authorities.

4.3.2 Approved or registered exporter

In general, self-certification describes a simple process whereby an exporter can issue its own proof of origin to allow the importer in another country to claim preferential tariff treatment under a specific trade agreement. Self-certification reduces the documentation burden of traders when claiming preferential tariff treatment and should help improve the utilization of tariff concessions. Under this scheme, the primary responsibility of origin certification is carried out by the traders themselves – manufacturers and exporters – including SMEs participating in regional trade. Certified or approved exporters are allowed to declare that their products have satisfied the specific origin criteria and are thus originating in a country that is party to a specific agreement on free trade or on regional trade. The declaration will be completed by an approved exporter on a commercial invoice or, in the event that the invoice is not available to the importer at the time of exportation, on any other commercial document such as a billing statement, delivery order or packing list. Therefore, chambers of commerce and industry, customs authorities, ministries of trade or related agencies, producers and/or exporters will be able to fully comply from their own offices, which will facilitate the issuance of a proof of origin document.

European Union trade agreements usually provide for a system that allows exporters to establish the proofs of origin (invoice declaration) themselves. The European Union Generalized System of Preferences launched the next level of authorization with the introduction of the registered exporter system in 2017. This system employs a central database, administered by the European Union Commission in Brussels. To register, beneficiary countries log into the database and upload relevant information. If exporters fail to comply, such authorization is not granted.

To ensure uniformity of the respective Generalized System of Preferences, and in respect of bilateral agreements, Norway and Switzerland also accept the registered exporter system of the European Union Generalized System of Preferences as sole proof of origin in their respective Generalized System of Preferences. Such an approach will also be applied in the context of bilateral trade agreements between the European Union and its partner countries. The Comprehensive Economic and Trade Agreement, a free trade agreement concluded between Canada and the European Union, will be the first such agreement to implement a system similar to the registered exporter system. Another positive factor for firms is that while the Generalized System of Preferences certificates of origin Form A is usually sold at a low price, electronic registration in the registered exporter system of the European Union is free of charge.

Tripartite Free Trade Area provisions, similarly to SADC rules of origin, already propose that registration should not be required for the issuance of an invoice declaration concerning amounts below \$5,000. Ultimately, this solution facilitates trade but does not relieve the exporter of the obligation to verify compliance with the relevant rules of origin. A pan-African registered exporter system could greatly reduce documentary burdens. If rules of origin were aligned with the European Union Generalized System of Preferences for instance, rules of origin of the African Continental Free Trade Area might directly link to the registered exporter system of the European Union Generalized System of Preferences and/or accept such statements of origin under the African Continental Free Trade Area.

4.3.3 Verification

Administrative requirements are key to implementation, and certification goes together with the verification of origin. Businesses must be aware that the option to claim preferential tariff treatment abroad comes with administrative obligations. Upon application for certificates of origin or electronic certificates of rules of origin, as well as for obtaining approved exporter or registered exporter status, exporters must submit an array of documentation to ensure that the exported goods comply with the respective rules of origin.

In the importing country, customs administrations or any other competent authorities, trust that the exporting country has fulfilled its duties and verified the originating status of the goods covered by the certificates of origin. In case of doubt, importing countries might also request verification upon importation or post-verification of certificates of origin or other proofs of origin once consignments have been released into free circulation. Fully integrated electronic systems might allow for efficient and quick online verifications. Some countries also verify first by emailing other competent authorities.

The Automated System for Customs Data of UNCTAD and other customs systems may also allow for electronic verification. For example, the COMESA electronic certification of origin system allows all connected, competent agencies to access its servers to perform self-verification based on the documentation stored in the server. Similarly, in the registered exporters system of the European Union Generalized System of Preferences, the European Union would first consult the registration details in its own system before submitting a verification request to the exporting country. In this case, electronic means of communication have a major trade-facilitating effect.

4.3.4 Compliance costs

The implementation of the Agreement Establishing the African Continental Free Trade Area will incur costs for Governments, as they will have to provide the institutional framework for establishing and implementing the Agreement, so that the private sector can benefit fully from liberalization. At the same time, much of the literature advancing a private sector perspective points negatively at the compliance costs for administering rules of origin (Cadot and de Melo, 2008; Cadot, Estevadeordal et al., 2006).

In recent years, administrative compliance costs have been lowered, and exporters have become more aware of rules of origin compliance as such systems have spread across the globe. Some African countries are not only party to four regional agreements (excluding the Agreement Establishing the African Continental Free Trade Area), but are also party to economic partnership agreements and free trade agreements with European countries and the United States. Further, despite the administrative burdens, other administrative systems (i.e. the value added tax) and accounting principles may also require greater administrative efforts and capacities. This means keeping records much longer than three years, being able to show import and export documentation at any time and submitting periodic statements and accounts.

Certainly, a well-kept accounting and document management system also helps ensure compliance with any requirements under pertinent rules of origin regimes. However, documentary compliance is only one side of the coin; the other is compliance with the rules of origin themselves. Problems may occur where producers might have to source local, uncompetitive inputs to meet, for instance, a tariff shift or value added criteria, instead of being able to import and use a competitive input from abroad. Thus, compliance costs would include the cost of more expensive inputs and the problem of selling a product at a less competitive price. For example, some countries would like to see wholly obtained rules for certain products, i.e. cigarettes or cigars. Naturally, raw materials producers prefer wholly obtained rules of origin, as cigarette producers may eventually be obliged to use local tobacco. However, as consumers are sensitive to changes in taste, most mainstream brands mix tobaccos to obtain a uniform, consistent product. Thus, wholly obtained rules of origin automatically rule out any preference for such products. Under such circumstances, producers might simply choose to ignore the rules of origin of the African Continental Free Trade Area and pay most-favoured nation duties. The second choice would be to use an alternative preferential agreement that would not have such restrictive rules of origin.

Mizuno and Takauchi (2013) estimated compliance costs and found that if exporters faced too many uncertain production costs, through restrictive rules of origin, non-compliance might become the cheaper alternative. Too many barriers in the framework would trigger non-compliance as the safest and cheapest solution for producers and exporters to meet rules of origin requirements.

Governments should consult with the private sector to deal with constraints in observing proposed rules of origin, especially as raw materials are often not available in Africa at competitive prices because of high transportation costs. In this sense, COMESA provides a good approach to addressing constraints in production patterns by allowing members to ask for more liberal rules of origin for specific products. For example, it might allow members to use a 25 per cent value added rule, if economic interests are substantiated.

The African Continental Free Trade Area should consider a similar rule, as well as the instruction of the change-in-tariff-subheading rule, upon request, as it is virtually impossible to deal with all existing and upcoming production patterns in the current negotiations. A rule of origin upon request might at least allow for additional flexibility in the future. This flexibility might be agreed upon by the competent committee concerned and would not need to go through parliamentary approval and ratification in all member States; a normal amendment of the Agreement would suffice.

Not all compliance costs stem from rules of origin; some costs arise from customs procedures, laws and requirements relating to import or export. In this sense, the implementation of trade facilitation commitments as mandated by the Agreement on Trade Facilitation and the Agreement Establishing the African Continental Free Trade Area, can contribute substantially to lowering compliance costs and thus raise the utilization rate of the future agreement.

4.3.5 Origin fraud

Origin fraud is also an issue to be addressed, above all in trade environments with high tariffs. Regional economic communities in Africa usually combat fraud prevention with cumbersome documentary requirements for applying for a proof of origin certificate, as mentioned previously. Also, importing countries tend to have onerous requirements for granting preferential treatment. Fear of fraud has led many African Governments to refrain from applying potentially efficient solutions that make use of information and communications technology for rules of origin certification, for example, electronic certification. This may be due partly to a lack of familiarity with electronic certification tools, inadequate technological infrastructure and the initial costs of implementing such a system.

Fraud may be prevented by implementing risk-assessment schemes based on risk criteria, statistical information or verification requests from a trading partner. Addressing origin fraud through risk assessment might include the following steps:

- Introduction of a clearance programme with inspection options (red, orange or green channels) upon import
- Verification at a later stage based on national statistical analysis and inspection results
- Introduction of new verification tools such as scanning equipment.

Origin fraud could also be tackled by monitoring company websites and examining annual reports, information on competitors and publications that might contain helpful information and background data. Other points to explore would be the relationships between buyers and sellers, accounting systems (electronic or on paper), production data on the sector concerned and statistics.

However, fraud can be prevented a priori, by educating private sector operators about the benefits and administrative aspects of operating within the African Continental Free Trade Area, highlighting the need to comply with rules of origin. Also, customs administrations and related agencies should strengthen mutual cooperation – outside diplomatic channels – and share their knowledge within the framework of the African Continental Free Trade Area and beyond. This has also been highlighted in discussions within the framework of the Agreement on Trade Facilitation and on illicit financial flows. A customs academy to be set up by the African Continental Free Trade Area could also be considered.

Origin fraud can be reduced by:

1

Adopting rules of origin that are **simple and transparent**

2

Enhancing cooperation and trust between the **private sector** and **relevant government agencies**



Simplifying rules of origin would also help prevent fraud. Some countries introduce mandatory origin and customs procedures training courses for exporters seeking to become approved economic operators. The whole concept of the approved exporters of the Pan-Euro-Mediterranean Convention for origin purposes relies on mutual trust and the exporters' ability to correctly apply rules of origin schemes. Enhanced cooperation and trust between the private sector and competent government agencies are necessary to reduce fraud.

4.4 Institutional set-up, transparency and dispute-settlement mechanisms

4.4.1 Implementation prerogatives

Several regional economic communities have made great advances in implementing rules of origin through electronic processing and customs procedures (i.e. Automated System for Customs Data). Further, the COMESA agreement and other regional agreements experiment with electronic certification and verification of origin systems, which could provide guidelines for the rules of origin of the African Continental Free Trade Area that seek to introduce electronic certificates of origin systems and eventually, self-certification systems.

African negotiators have amassed considerable knowledge through discussions on the European Union Generalized System of Preferences, negotiations on the Cotonou Agreements and economic partnership agreements, the African Growth and Opportunity Act, regional agreements in different set-ups and the introduction of customs unions (EAC, Southern African Customs Union).

Negotiators should consider regional and country-specific sensitivities and will have to foster cooperation to find solutions. Countries should be provided with several options for tariff-dismantling schedules and deadlines to accommodate their needs. LDCs benefit from longer periods of dismantling tariffs and a longer list of sensitive products; LDC specificity should be part of the ongoing negotiations.

Widely consulted and well-balanced rules of origin are the most likely to be implemented. The whole protocol, including certification and verification, should be able to stand the test of time to avoid cumbersome renegotiations and updates that may confuse Governments and private sector operators. Care should also be taken to ensure that

the translation of the legal texts of rules of origin into different languages is consistent across regional economic communities, so that the interpretation of the rules is likewise consistent across countries.

4.4.2 Notification, harmonizing and monitoring role of the secretariat of the African Continental Free Trade Area

Part III of the Agreement Establishing the African Continental Free Trade Area outlines the main rules relating to administration and organization. The secretariat is the administrative organ tasked with coordinating the implementation of the Agreement. It will work autonomously within the African Union system but will be supervised by the Chair of the African Union Commission and will receive funding from the African Union budget. The Committee of Senior Trade Officials is a high-level working group consisting of principal secretaries or other officials designated by each Member State. It is responsible for the development of programmes and action plans for the implementation of the Agreement. All issues pertaining to rules of origin under the African Continental Free Trade Area will be addressed by a specifically designated committee on rules of origin.

4.4.3 Transparency and dispute resolution

Similar to other agreements, and in line with WTO principles, part IV of the Agreement Establishing the African Continental Free Trade Area sets out transparency rules. This includes the obligation of the parties to adopt domestic procedures to enhance transparency in promulgating and notifying laws, regulations and administrative practices, including notification of such to the secretariat. As a guideline, COMESA and EAC now implement systems to systematically tackle problems in cross-border trade. The COMESA notification system and EAC time-bound programme represent a mechanism for the identification, reporting, resolution, monitoring and elimination of non-tariff barriers. To facilitate notifications, COMESA recently introduced a text-messaging notifications option, thus allowing more users to notify in real time problems in cross-border trade.

The Agreement could enhance its visibility, transparency and implementation by further developing the following lines of action:

- Members should inform the Committee on Rules of Origin of the measures being taken to implement the rules of origin provisions.
- Members should provide import data annually.

- The secretariat of the Committee on Rules of Origin should calculate and publish utilization rates.
- Referential rules of origin should be notified according to established procedures in the event that members of the African Continental Free Trade Area enter into other free trade area agreements or conclude agreements with third countries.

The Committee on Rules of Origin will annually review the implementation of rules of origin and the transparency provisions and submit reports and recommendations to the Committee of Senior Trade Officials.

Should the Committee on Rules of Origin and the Committee of Senior Trade Officials fail to find a mutually agreed solution in the ordinary committees, the African Continental Free Trade Area would provide for a dispute-settlement mechanism, such as that of WTO.

4.5 Implementation of rules of origin

4.5.1 Government institutions: Negotiation and conclusion of the Agreement Establishing the African Continental Free Trade Area

In most countries, ministries of trade or commerce, in cooperation with other agencies, lead negotiations on chapters relating to trade in goods. For example, they negotiate with the ministry of agriculture on issues relating to agricultural products and with customs authorities and ministries of finance with regard to customs dismantling and rules of origin. The Seventh Meeting of the African Union Ministers of Trade was held in Egypt on 12 and 13 December 2018 to consider progress in negotiating the Agreement. The Ministers of Trade directed the negotiators to finalize annex 2 on rules of origin by the end of June 2019.

In negotiating product-specific rules of origin, Governments should consider implementing a major goal. Thus, rules of origin should be realistic and follow a common pattern, to facilitate implementation and acceptance, not only in their own countries, but also in the investment community, as the realization of the African Continental Free Trade Area will require foreign direct investment in African value chains to be successful. Implementation means not only that the private sector will be empowered to use such

value chains, but that they should also be verifiable, as verification should be part of the implementation process. Administrative burdens should be kept to a bare minimum.

4.5.2 Involvement of the private sector

Lessons learned from negotiations on economic partnership agreements show that the private sector should be involved early on to avoid problems relating to the implementation of the Agreement. Key stakeholders should be involved from the start, i.e. at the negotiation stage, to ensure ownership of the Agreement at the national level. Such problems have already arisen in some countries, as in the case of Nigeria, where business associations opposed the ratification of the Agreement because of claims from the private sector that the private sector had not been adequately consulted or advised that the Agreement could adversely affect Nigerian industries and fuel unemployment (Adekoya, 2018; *The East African*, 2018).

The Agreement contains an obligation for member States to establish national implementation committees that include private sector representatives. Knowledge sharing, capacity-building and needs assessments are required to enable the smooth implementation of rules of origin. In addition, there is a need to do the following:

- Strengthen and support the establishment of national implementation committees in the African Continental Free Trade Area
- Align the establishment of national implementation committees of the African Continental Free Trade Area with that of national trade facilitation committees (WTO) to ensure consistency and uniformity of approach
- Identify and address operational and capacity constraints, awareness-raising and implementation needs assessment in all countries
- Establish focal or inquiry points and help desks in each member State and strengthen existing mechanisms
- Ensure coordination of international donors.

In addition to donor coordination, inter-agency collaboration is essential to ensure more coherent, efficient and coordinated planning and implementation. Continuous awareness raising among stakeholders will be necessary in implementing the Agreement when it comes into force. Implementation, however, can only begin once the rules of origin are agreed.

Addressing all other constraints in Africa should be a priority for all parties to the Agreement, if Africa is to seize the available opportunities. Productive capacities and competitiveness in Africa need to be strengthened. Technical sanitary or phytosanitary standards should be aligned to enable trade and not hinder it. Such trade-facilitation measures are as important as rules of origin. Implementation is vital for rules of origin systems to allow and enable businesses to enjoy the benefits of integrated markets through tariff concessions.

The closer the rules of origin of the African Continental Free Trade Area are to existing systems, the less effort will be required to implement and explain to businesses the new rules of origin. There are many different agreements in Africa but their rules of origin generally share the following characteristics:

- Similar wholly obtained rules of origin
- Some type of cumulation allowed and alignment of general rules of origin
- Product-specific rules of origin generally based on changes in tariff heading and value added concepts.

Further, electronic certification in some regional economic communities, and lessons learned can be replicated in the rules of origin of the African Continental Free Trade Area. Inter-agency cooperation (customs, government ministries, chambers of commerce and industry, customs agents or customs brokers) is standardized in several regional economic communities but needs to be enhanced.

Some African countries already have comprehensive trade portals or one-stop-shops, for investment promotion (usually under investment promotion agencies), export promotion agencies or ministries of commerce or economy.⁵⁵ Customs authorities and the competent import or export agencies also maintain good online tools and information.

In principle, Governments and private sector stakeholders across Africa are already observing regional agreements and should be familiar with the rules of origin and opportunities that could develop through the African Continental Free Trade Area. Capacity-building is necessary for stakeholders to implement the Agreement.

⁵⁵ For an interesting example of a one-stop shop, see www.gobotswana.com/ (accessed 25 February).

4.5.3 Support for small and medium-sized enterprises and the business community: Incidence and evolution of compliance costs over time for exporting firms

Compliance costs are a concern of the private sector, and the more rules of origin regimes they have to navigate, the higher the administrative burden. However, over time, the private sector also learns how to handle regional economic communities and the rules of origin; thus, the African Continental Free Trade Area could create good opportunities for African traders and producers. Rules of origin and procedural requirements should be aligned with best practices from other regional economic communities and economic partnership agreements.

Today, online tools provide more options to minimize compliance costs for exporting firms. The wider business community – chambers of commerce and industry, customs brokers and agents' associations – can also play a role in disseminating best practice and capacity-building.

4.5.4 Need for capacity-building assessment

Donor agencies have been active within Africa in the provision of trade and development cooperation projects and activities. The European Union, for instance, assists African, Caribbean and Pacific countries through TradeCom I and II projects, but also deploys considerable efforts in the implementation of economic partnership agreements.

To attract donor agencies, the African Union and its members should undergo a needs assessment in relation to the overall implementation of the Agreement, including rules of origin. Next, an action and implementation plan should be drawn up with a timetable, providing an opportunity for donors to assist in the implementation process in a coordinated manner, at the public and private sector levels.

Capacity-building must be envisaged for all countries. As some will require more assistance than others, a needs assessment should be conducted in all African countries and the above-mentioned plan established. Capacity-building will cover all sorts of available tools, from awareness raising to printed media and electronic tools, such as online toolboxes, training courses, materials and information. The needs assessment should be carried out in all signatory countries, to coordinate and streamline all implementation efforts, together with national players in each country, whether government entities, think tanks or major business associations.

4.6 Using new technology

The increasingly rapid diffusion of information and communications technology innovations in Africa makes implementation and awareness raising easier. Therefore, increased emphasis should be placed on using modern technology, including online training programmes, information-sharing tools and help desks. In addition to these, Governments should consider providing an online rules of origin toolbox in local languages. There are a few examples of online rules of origin information services that may prove useful to African countries, such as the World Customs Organization, WTO and International Trade Centre rules of origin facilitator (available at <http://findrulesoforigin.org/home/index>; accessed 25 February 2019); various African Union and African Development Bank websites containing legal documentation and rules of origin training materials; and UNCTAD online handbooks on duty-free quota-free market access and rules of origin for LDCs.

Many Africans still have limited or no access to fully fledged Internet services. Therefore, online services might need to be simplified (push messaging, text messaging and unstructured supplementary service data). If many people do not have access to ordinary laptops or computers, the development of special applications could be envisaged, for example, an African Continental Free Trade Area application for smart devices. Clearly, linkages between training tools and online training in member States should be improved, as well as linkages to one-stop-shops, mainly for customs procedures but for export/import information, as well.



4.7 Monitoring

The parties to the Agreement Establishing the African Continental Free Trade Area should develop and implement an effective monitoring and evaluation mechanism to track progress on implementation and ensure that the utilization of preferences is widely available and that the objectives of the Agreement are realized. This extends beyond mere rules of origin and would include all major commitments to be monitored and evaluated on a periodic basis. The African Continental Free Trade Area Committee on Rules of Origin should follow up annually on the implementation of the rules of origin and application modalities. The WTO Technical Committee on Rules of Origin, established under the WTO Agreement on Rules of Origin, has developed a model for the calculation of utilization rates that could serve as a model in Africa. The secretariat of the Continental Free Trade Area should ensure that such information is publicly available. Underutilization of preferences should be investigated at the regional and country levels to determine the root cause of such underutilization. This requires public–private dialogue, consultation processes and portals where the private sector can directly comment and submit complaints.

4.8 Shared goals, different capacities and perspectives

UNCTAD (2015a) advocated a reform agenda for Africa that would cover goods and services, put in place appropriate regulations for integrated markets and build the capacity of institutions that are essential if Africa is to achieve its potential in regional business, in particular cross-border trade.

Efforts to accelerate regional integration hinge on political economy and regional dynamics. Five factors relating to political economy shape and influence the dynamics of regional integration (Byiers et al., 2015):

- Structural factors that are mostly embedded in geography,⁵⁶ history, demographic and economic characteristics of a country or region.
- Institutional capacity to set and monitor the rules of the game. These can be formal, written or codified rules (in legal texts), or open practices associated with norms, beliefs and customs.

⁵⁶ An example is the Moroccan automotive industry, which benefits from the proximity of Morocco to the European Union (chapter 3).

- Factors that support or undermine the reforms of actors or their capacity to act and make choices, mainly according to their economic, political and social power.
- Characteristics, including technical features, of specific sectors that may have political implications such as influencing incentives and accountability measures.
- External factors that affect the domestic political economy, regional dynamics and organizations. Among these are global trade, investment patterns, climate change, consumer preferences and attitudes in affluent markets. External factors can change abruptly.

These factors can influence the incentive environment in which domestic and regional actors operate and the choices they make. They influence ideas, choice of priorities, resource distribution rents and power. They determine the implementation of reforms that streamline trade regulation and processes that improve the business climate and financial management, promote value addition and eliminate non-tariff barriers. Nonetheless, as previously discussed, rules of origin implementation in the African Continental Free Trade Area and the sectors analysed in chapter 3 demonstrate a need to shift the focus from market access-based integration to development-based integration (see chapter 1). Developmental integration involves a greater focus on industrialization and cross-country infrastructural development in the form of roads, rails, airports, seaports and communication facilities.

Effective regional integration is more than mere tariff elimination – it is also about addressing implementation challenges relating to the Agreement on the African Continental Free Trade Area and regional trade agreements and dealing with on-the-ground constraints that disrupt the daily operations of ordinary producers and traders (see chapter 1). It is therefore expedient that mechanisms for harmonizing trade laws within Africa be adopted to realize the objectives of the Continental Free Trade Area and make it more attractive to investors. The private sector is critical in this respect. Regional business associations, including the East African Business Council, COMESA Business Council and SADC Business Forum, represent the voice of the private sector and can influence the pace of regional integration processes. Two bodies of the Continental Free Trade Area, the African Business Council (a continental platform tasked with aggregating and articulating private sector views on continental policy formulation processes) and the African Trade Forum (a pan-African platform for reflection and discussion on the

progress and challenges of continental market integration) play important roles in achieving the following objectives: ensuring trade integration based on the need to improve on trade performance in Africa and consequently, its economic development; supporting the harmonization of business laws in Africa; harmonizing trade legislation and commercial practices that have the potential to distort trade flows; and providing assurances for the protection of businesses against unfair trade practices.

4.9 Conclusion

Rules of origin should remain simple, transparent, predictable and trade-facilitating to enable their implementation. Implementation is essential for rules of origin systems to enable firms to reap the benefits of integrated markets through tariff concessions. The closer the rules of origin of the African Continental Free Trade Area are to existing systems, the less effort will be required to implement and explain to businesses the new rules of origin. Capacity-building, the adoption of new technology and the establishment of an effective monitoring and evaluation mechanism to track progress on rules of origin implementation will be necessary to ensure that preference utilization is high and that the objectives of the African Continental Free Trade Area are realized. Understanding the role played by all stakeholders is also essential to ensure an appropriate continental policy response. These require institutional and implementation mechanisms for collaborative and inclusive continental policymaking in the Continental Free Trade Area.

