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Special Issue

Reaping the AfCFTA Potential Through Well-Functioning Rules of Origin

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ABSTRACT

The African Continental Free Trade Area (AfCFTA) Rules of Origin (RoOs) determine the conditions for the application of the Agreement's tariff preferences. The effectiveness of existing preferential trade agreements within the continent is undermined by heterogeneous RoO regimes and costly trade facilitation procedures. If these issues continue unchecked, they could harm the realization of AfCFTA ambitions. Here, we first discuss the economics of preferential RoOs, highlighting their associated benefits and costs within and beyond the African context. Second, we focus on the implementation of RoOs under the AfCFTA. We contend that cost-effective implementation is crucial to the AfCFTA RoO regime for production hubs to benefit from integrated African markets. Capacity building, the adoption of new technologies, and the establishment of effective institutional mechanisms will be important to track progress on RoO implementation and ensure high preference-utilization rates under the AfCFTA. These efforts shall be complemented by targeted support to the least developed countries and to small and medium enterprises. Finally, we recommend a set of actions to ensure the impartial, transparent, predictable, consistent, and cost-effective implementation of the AfCFTA RoOs.

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1. INTRODUCTION

The African Continental Free Trade Area (AfCFTA) aims to create better integrated markets. Through the reduction or removal of tariffs and non-tariff barriers, the landmark continental free trade area will enable the levels of economies of scale and investment necessary to develop wide-reaching regional value chains and to support the continent's transformational industrialization (UNECA et al., 2017; Tsowou and Ajambo, 2020; World Bank, 2020). Recent estimates from the World Bank (2020) suggest that, by 2035, the AfCFTA could boost Africa's total exports by 29%, intra-continental trade by more than 81%, and Africa's exports to the rest of the world by 19%, with most of the gains accrued to the manufacturing sector. Such bright prospects for production and intra-African trade stem from the ambitious level of liberalization envisaged in the Agreement, with at least 97% of tariff lines expected to be fully liberalized. Yet, for goods to enjoy the AfCFTA trade preferences (i.e., to qualify as "originating" goods), their compliance to a minimal level of processing within the continental free trade area will be required. The set of rules and practices governing such compliance are determined by the AfCFTA Rules of Origin (RoOs).

Rules of Origin state the conditions for the application of tariff concessions and set the framework for preferential treatment within a free trade area (FTA). The extent to which the AfCFTA RoOs are designed, enforced, and monitored will be critical to the promotion of regional value chains and will determine the size and distribution of economic benefits. Conversely, burdensome excessive compliance requirements to these rules might disincentivize businesses from producing and trading under AfCFTA preferences, putting at risk the realization of its goals.

Conceptually, a Ghanaian cocoa butter manufacturer exporting to chocolate producers in South Africa under AfCFTA preferences faces RoO compliance costs. These costs are inherent to production, for example emanating from technical requirements including sourcing inputs such as cocoa beans and labor in the FTA, and administrative procedures from ascertaining compliance to the rules (Angeli et al., 2020; Estevadeordal and Suominen, 2003). Alternatively, if the Ghanaian manufacturer opts to trade under the Most-Favored-Nation (MFN) clause, there will be no obligation to prove the origin. Ceteris paribus, if the costs associated with AfCFTA RoOs are higher than the MFN tariff, then the manufacturer will export to South Africa under MFN. In the same vein, if South Africa-based chocolate producers encounter excessive RoO-related costs from sourcing cocoa powder from the AfCFTA, they might import their inputs from outside the area. Similarly, wheat grown and harvested in Morocco can be processed locally into flour and shipped to a Kenyan baker under AfCFTA

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preferential schemes. This will however require the Moroccan exporter to provide documents that prove the originating status of the milled wheat. In a situation where the flour is processed from a mix of locally produced and imported wheat, the exporter will then have to prove that it meets the threshold local value content set under the AfCFTA RoOs. The Kenyan baker could then process bread and cookies from the flour and trade them in AfCFTA markets under preferential tariffs. However, for the baker, if the costs of compliance with AfCFTA RoOs associated with sourcing the flour from Morocco or any other AfCFTA country are too high, importing the flour from other regions could be a more viable option.

So, what are the key enabling conditions for implementing AfCFTA RoOs that promote intra-Africa trade while being cost-effective for businesses? This is the main question we aim to answer. First, we discuss the economics of preferential RoOs, highlighting the costs and benefits associated with these rules and drawing on experiences across and beyond Africa. Second, we discuss the implementation of RoOs under the AfCFTA. We contend that implementation remains key for the RoO regimes to enable production hubs to reap the benefits of integrated markets under AfCFTA tariff concessions. Lastly, we highlight a number of actions to ensure the impartial, transparent, predictable, and consistent enforcement of cost-effective AfCFTA RoOs.

The paper therefore contributes to the literature on challenges and opportunities that will emanate from the implementation of the AfCFTA. It specifically discusses the enabling conditions that would support AfCFTA implementation and compliance with its RoOs. At present, studies that have looked at similar issues are scarce and have rather focused on existing rules at the level of Regional Economic Communities (RECs). There has not been extensive research on the outcomes of RoOs within existing regional trade agreements across Africa because there is lack of data on the utilization rate of preferences, defined as the ratio of imports (in value terms) that are eligible and make use of preferential treatment to total eligible imports. Thus, we stress the urgent need to collect such data under the AfCFTA. This is essential to effectively monitor and understand the challenges and opportunities related to the utilization of AfCFTA RoOs. We offer practical examples and actionable recommendations, with timely insights for governments and the private sector as they proceed together on the path toward a successful implementation of the Agreement establishing the AfCFTA.

The remainder of this paper is structured as follows. Section 2 presents the conceptual definition and economic justification for RoOs. Section 3 discusses the scope of AfCFTA RoOs. Section 4 examines the enabling conditions for the successful implementation of AfCFTA RoOs. Section 5 offers some concluding remarks and highlights key policy recommendations.

2. RULES OF ORIGIN: CONCEPT, DEFINITION, AND ECONOMIC JUSTIFICATION

2.1. Rules of Origin: Conceptual Definition and Origin Criteria

Rules of origin are a set of laws, regulations, and administrative rules that determine the national source of a product. According to the World Customs Organization (WCO, 2012), "the basic role of rules of origin is the determination of the economic nationality as opposed to the geographical nationality of a given good."[1] The simple case of determining RoOs is provided when production of a certain good occurs entirely in a given country: the product "originates" from that country. Determining the origin is more complex when more than one country is involved in the production process. For example, when cocoa beans are harvested in Côte d'Ivoire and ground in the same country, but the output (that is, cocoa powder) is exported to South Africa for further transformation into chocolate, determining the origin of the final product becomes more complex. In this example, RoOs help determine which country should be considered the "origin" of the processed chocolate.

There are risks associated with the transshipment of goods sourced from a third country at preferential costs as originating goods from an FTA. A Ghanaian cocoa butter manufacturer can source beans from non-AfCFTA markets (e.g., Indonesia) and use them to process its outputs without complying with AfCFTA value content requirements. Thereafter, the processed butter could be exported to the South African market under the AfCFTA tariff preferences. Similarly, wheat flour producers from Morocco can use a significantly high share of wheat sourced from the European Union to process flour shipped to Kenya under the AfCFTA RoOs. Such practices can lead to trade disputes. For example, smuggling goods and transshipments of non-originating merchandise from Economic Community of West African States (ECOWAS) as originating items, among other factors, led to a border closure between Nigeria and Benin from August 2019 to December 2020. During this period, Nigeria only allowed goods traded through formal channels and increased verification of compliance with prevailing ECOWAS trade rules (Abegunde and Fabiyi, 2020).

Two broad categories of RoOs exist: non-preferential trade RoOs and preferential RoOs. The former are generally applied for purposes other than granting preferential tariff treatment. Examples include the application of World Trade Organization (WTO) tariff rates or trade policy measures such as quotas, anti-dumping rules, or geographical indication[2] labeling requirements. Preferential RoOs, which are the main focus of this paper, relate to RoOs applied under preferential trade arrangements, including regional trade agreements, customs unions, or preferential schemes in favor of a target group of countries. Criteria for preferential RoOs are categorized into *main origin criteria* or *product-specific rules of origin* and *regime-wide rules of origin*, each with a set of sub-criteria (Figure 1).

[1]WCO (2012). Rules of origin handbook. World Customs Organization Available online at http://www.wcoomd.org/~/media/wco/public/global/pdf/topics/origin/overview/origin-handbook/rules-of-origin-handbook.pdf (accessed in July 2020).

[2]Geographical Indication (GI) is a label used on goods that have a specific geographical origin, therefore possessing a singular reputation or quality due to that origin.

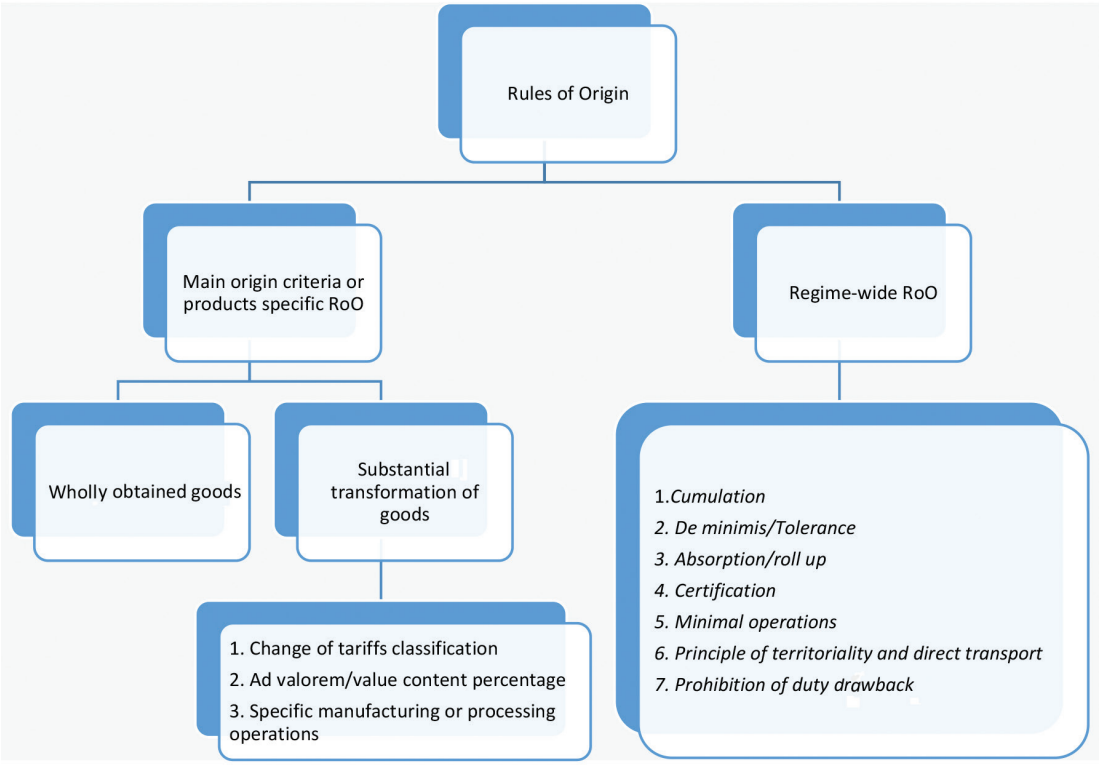

Figure 1 | Criteria to determine preferential Rules of Origin. *Source*: Authors, based on UNCTAD Economic Development in Africa Report 2019 (UNCTAD, 2019) and Estevadeordal et al. (2009).

2.1.1. Main origin criteria or product-specific rules of origin

The *main origin criteria* or *product-specific rules of origin* are usually established for specific products or sectors. This means that the originating status in these cases is conferred on a product-by-product or sector-by-sector basis. These criteria are twofold: (i) the *wholly obtained* criterion is applied to products entirely obtained or produced in one country, and (ii) the *substantial transformation* criterion requires a minimum level of processing to confer the "originating status" of a product to a country. For example, meat produced in Chad from cattle born and raised in the country is considered without any ambiguity as originating from Chad based on the *wholly obtained* criterion of the RoOs. The same logic applies to manganese metals obtained in Gabon from manganese ores extracted in the country. The *substantial transformation* criterion is usually determined according to at least one of the following sub-criteria: (i) *change in tariff classification*, (ii) *ad valorem percentage* or qualifying *value content percentage*, and (iii) *specific manufacturing* or *processing* operations.

The *change in tariff classification* sub-criterion confers originating status to a product if its tariff classification[3] is different from that of the imported inputs used to manufacture it. This sub-criterion allows for an objective formulation of the RoOs. It provides manufacturers with little difficulty to produce evidence that processed goods meet the requirements. However, a concern arises where some changes in classification might not require a significant level of processing yet do not support the RoO objective to contribute to value creation in a free trade area. For example, transforming "*Nuts, edible; coconuts, fresh or dried, whether or not shelled or peeled*" (HS code 080110) to "*Nuts, edible; coconuts, fresh or dried, whether or not shelled or peeled, dessicated*" (HS code 080111) is easily achievable without much processing. Yet, the operation implies a change of the subheadings with the HS nomenclature. Another illustration relates to diamonds, with raw or cut diamonds being classified under the same subcategory: "*Diamonds, whether or not worked (HS code 710210).*" In addition, HS classification undergoes periodic revisions that might induce recurrent updates of changes in RoOs based on tariff classification.

The *ad valorem* or *value content percentage* confers originating status to a product if a predetermined percentage of value addition takes place within an exporting country or a specified region. In other words, the "originating" processed goods must include a minimum level of locally or regionally sourced inputs. The percentage can be a minimum share of the value content of materials originating in an exporting country or a region, or a maximum share of non-originating value content (referring to the value of imported inputs vis-à-vis the value of processed products). Value content can be determined by several approaches, including the free on-board price or cost, ex-work price, insurance, and freight price (UNCTAD, 2019). Although this sub-criterion permits precision by allowing RoOs based on value content, it does not allow for flexibility: any deviation to the actual value content percentage from the threshold can lead to the

[3]Under the HS nomenclature, numbers up to six digits are allocated to each commodity, good, or item in groups. The first two digits identify the chapter under which the goods are classified (e.g., 02 – Meat and edible meat offal). The next two digits identify the sub-grouping in each chapter (e.g., 0201-Meat of bovine animals, fresh or chilled). The last two digits provide more specific details on the products (e.g., 020110 – Meat of bovine animals, carcasses, and half-carcasses, fresh or chilled).

acceptance or rejection of originating requirements. Furthermore, determining the thresholds (e.g., the minimum level of locally or regionally sourced inputs) can be subjective, making it difficult to reach consensus among members of the same FTA. Another major challenge with this criterion relates to the determination of product values. The calculation often requires the determination of domestic costs, which may be complex for a manufacturer, especially for Small and Medium Enterprises (SMEs). Furthermore, such an approach may weigh negatively on businesses operating in landlocked countries, which usually encounter high inputs costs due to relatively higher transportation charges than coastal countries. This criterion may also be sensitive to movement in commodity prices, exchange rates, and other costs that could weigh on the costs of imported inputs or final products. In addition, stringent requirements for local or regional value added may outweigh competitive advantages of cheaper labor in some groups of countries vis-à-vis others. For instance, the new United States–Mexico–Canada Agreement's RoOs have a provision requiring that 40% of the value content of cars and 45% of trucks be manufactured by workers earning not less than US$16 per hour. Such a rule clearly disadvantages Mexico, where wages in the sector are less than US$4 per hour (Garcia and Catizone, 2020).

Finally, the *specific manufacturing* or *processing operations* criterion requires originating goods to comply with specific manufacturing processes in the exporting country. This rule is relatively clear and allows manufacturers and exporters to provide documentary evidence easily if required. Key challenges with this criterion include the need to keep descriptions of the qualifying processes simple, difficulties preparing a list of exceptions to the rules, and requirements to keep up-to-date lists with changing technical and economic conditions.

2.1.2. Regime-wide rules of origin

Regime-wide rules of origin are a set of generic rules established for all products and sectors. They provide more flexibility than product-specific RoOs (Angeli et al., 2020). *Regime-wide RoOs* include a number of rules such as *cumulation*, *de minimis* or *tolerance*, *absorption* or *roll up*, *certification*, *minimal operations*, *prohibition of duty drawback,* and the *principle of territoriality*.

Cumulation is a major *regime-wide RoO* that allows manufacturers from a free trade area to use inputs from other members of the area or from third countries (specifically mentioned in the Agreement) without losing preferential treatment for the processed goods. *Cumulation* can take different forms, including bilateral, diagonal, full, and third-party cumulation. *Bilateral cumulation* refers to provisions that allow a state party of an FTA to use inputs originating from another member without the final product losing its originating status. *Diagonal cumulation* is equivalent to *bilateral cumulation* but is applied to more than two members. *Full cumulation* is established between any number of countries and applies to initial inputs not originating from yet processed in the FTA. *Third-part cumulation* (also called "cross" or "extended" cumulation) is the most flexible type of cumulation and accounts for any of the previous types of cumulation among countries that are not part of a trade agreement or among countries that have adhered to a trade agreement with different RoOs.[4]

The *de minimis* or *tolerance* rule allows for a specified maximum value content of non-originating materials to be used in the processing of a good without the latter losing its preferential treatment. The provisions related to this rule therefore permit goods to meet originating requirements despite incorporating non-originating inputs (Estevadeordal et al., 2009).

The *absorption* or *roll up* rule allows for non-originating materials that have acquired originating status under specific processing requirements to retain such status when used as inputs in further processing activities.

Certification rules establish procedures that ensure that preferences are only granted to originating products for preferential treatment. The procedures determine how compliance with RoOs can be demonstrated and verified. The certification systems can be led by a public or private entity, or they can be self-administered by manufacturers of exports (often referred to as *self-certification*).

Minimal operation rules define the level and nature of operations that cannot confer originating status to a final product. These operations include packing, cleaning, and transportation and storage.

The *principle of territoriality* implies that manufacturing or processing must be undertaken in a certain territory to enjoy preferential treatment. Otherwise, it loses its entitlement to such treatment. The *principle of direct transport* implies that goods are sent directly from the exporting to the importing country if they are to comply with the RoOs. However, exceptions may be granted with goods being able to transit via third countries under specific conditions. For example, an exception might be made for goods that remain under the supervision of the customs authorities in the country of transit.

Finally, the *prohibition of duty drawback* prevents refunding tariffs on imported inputs that are subsequently included in a final product exported to a fellow member of an FTA. The main contention here is that such a refund would permit a manufacturer exporting to the FTA to benefit from a double preference, thereby creating unfair competition.

2.2. Prevailing Rules of Origin Across Africa

The various rules discussed so far have been established by countries under Preferential Trade Arrangements (PTA), a prerequisite to conferring originating status to goods. Most existing PTAs in Africa and beyond use a combination of these rules to frame their RoOs. Table 1

[4]For more information on these different types of cumulation, the reader is invited to refer to the International Trade Center Rules of Origin Facilitator platform at https://findrulesoforigin.org/en/glossary?uid=accum&returnto=gloscenter.

Table 1 | Key features of the rules of origin in selected RECs and free trade areas in Africa

	COMESA	EAC	ECCAS	ECOWAS	SADC	TFTA	AfCFTA
Main origin criteria							
Wholly obtained	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Ad valorem percentage	General: Yes Three *ad valorem* percentage calculations and change of tariff heading (not an across-the-board criterion; limited to specific headings in Appendix V of COMESA protocol on RoOs)	General: No	General: Yes Uniform percentage across all products (minimum 30% of regional value content: minimum value contingent on calculation criterion used)	General: Yes Uniform percentage across all products (minimum 30% of regional value content, using value added by subfraction)	General: No	General: No	General: No Percentage to be determined by products/sectors
Change of tariff classification	Applicable	Applicable	Not applicable	Not applicable	Applicable	Applicable	Applicable
Regime-wide rules							
Cumulation	Yes	Yes	Yes	No explicit terms in legal text	Yes	Yes	Yes
Tolerance	No	Yes	No	No	Yes	Yes	Yes (to be agreed)
Absorption	Yes	Yes	Yes	No	Yes	Yes	Yes (to be agreed)
Certificate of origin	COMESA certificate of origin	EAC certificate of origin	ECCAS certificate of origin	ECOWAS certificate of origin (agricultural products, livestock products, and handmade articles exempt from this requirement)	SADC certificate of origin	Tripartite Free Trade Agreement certificate of origin	AfCFTA certificate of origin
Certifying authorities	Yes; specimen impressions of stamps and specimen signatures of officials required	Yes; specimen impressions of stamps and specimen signatures of officials required	Yes; specimen impressions of stamps required	Yes; signature must be provided with name and function	Yes; specimen impressions of stamps and specimen signatures of officials required	Yes; specimen impressions of stamps and specimen signatures of officials required	Yes; specimen impressions of stamps and specimen signatures of officials required
Notification requirement to certifying authorities	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Exporter declaration (self-certification)	No	No	No	No	No	No	No
Approved exporter	No	Yes	No	No	No	Yes	Yes
Exporter declaration for small consignments	No	Yes; maximum $500 for person-to-person shipment; or maximum $1200 as traveller luggage	No	No	No	Yes; maximum $500 for person-to-person shipment or maximum $1200 as traveller luggage	Yes; maximum $500 for person-to-person shipment or maximum $1200 as traveller luggage
Direct Shipment requirement	Yes	Yes	No clear provisions in legal text	No explicit terms in legal text but definition of consignment is provided	Yes	Yes	Yes
Document evidence of direct shipment requirement	No clear provision in legal text	No clear provision in legal text	No clear provision in legal text	No explicit terms in legal text definition of consignment is provided	Single transport document or document certified by customs authorities of third country	Single transport document or document certified by customs authorities of third country (if unavailable, any substantiating evidence may be accepted)	Single transport document or document certified by customs authorities of third country

Source: Based on UNCTAD (2019) for the RECs and TFTA. For the AfCFTA, information was collected from consultations of legal texts of the Agreement and informants close to the negotiations.

lists some RoO elements prevailing in the Common Market for Eastern and Southern Africa (COMESA), East African Community (EAC), Economic Community of Central African States (ECCAS), ECOWAS, Southern African Development Community (SADC), Tripartite Free Trade Area (TFTA), and AfCFTA.

Rules of origin provisions vary throughout African PTAs. COMESA for example provides three options for calculating value content. The *change in tariff classification* criterion is established and consist mostly of specifications at the chapter and heading levels. COMESA does not have a *tolerance rule* but permits *diagonal cumulation* and has made provisions for the *absorption rule*. The common market also provides simplified procedures for small-scale traders subject to validation by the relevant authorities. The EAC does not have a general *value content percentage* criterion applicable to all products but is rather product-specific based. The community applies a *change in tariff classification* criterion with most of the specifications at the chapter and heading levels. It also allows for *diagonal cumulation* and *tolerance and absorption rules* while permitting exporter declarations for small consignments. The ECCAS applies a uniform percentage across all products—a minimum of 30% of the regional value content. The community allows for diagonal cumulation and absorption, but has not made provisions for a tolerance rule. ECOWAS member states also uniformly established a minimum of 30% of the regional value content across all products. It does not make explicit reference to *cumulation* in the legal text but seems to apply it under Article 2 of its Trade Liberalization Scheme. ECOWAS does not have provisions for *tolerance* and *absorption rules*. The SADC and TFTA do not apply a general *ad valorem percentage* criterion. *Self-certification* is not allowed in any regional economic communities. The AfCFTA uses a hybrid approach that combines the *wholly obtained* and *ad valorem percentage* as the product-specific criterion along with a range of regime-wide rules (see Section 3.2 for a fuller discussion of the scope of AfCFTA RoOs).

The discussion here highlights the degree of heterogeneity in the RoOs applied through various trade agreements across Africa (at REC levels). Harmonization is thus difficult, if not impossible, at sub-continental or continental levels. However, there is a degree of convergence among existing RoO schemes: they have similar *wholly obtained* rules; they allow for some form of *cumulation*, and the alignment of general RoOs; product-specific RoOs are usually based on a change in tariff headings and value-added concepts; while thresholds may vary, the methods of calculation are similar; processing rules in certain industries are well accepted; and inter-agency cooperation (customs, ministries, chambers of commerce and industry, customs agents, and customs brokers) is standardized in several RECs, albeit only in basic ways.

2.3. Economic Justification of Rules of Origin and Empirical Evidence

Rules of origin are aimed at preventing trade deflection within an FTA by permitting products that have been sufficiently processed in the area to enjoy preferential treatment. The main argument is that RoOs should confer products originating from the FTA with a cost-competitive advantage, at least for those induced by tariff preferences. This also implies that if prevailing import tariffs or MFN tariffs are marginal or zero for certain products imported from any extra-FTA member states, the FTA does not confer any preferential tariff treatment to its member states on those items. Under these circumstances, the decisions of manufacturers within the FTA to source their intermediate goods from either FTA or non-FTA members will be driven mainly by other cost factors that are not associated with tariffs. Wherever they confer a cost-competitive advantage, RoOs can favor the development of Regional Value Chains (RVCs), with manufacturers sourcing relatively cheaper inputs from FTA-based producers rather than extra-FTA competitors (Conconi et al., 2018; Cadot and Ing, 2016). However, stringent and costly RoOs—induced by high production or administrative costs of compliance—can push intra-FTA manufacturers to source low-cost extra-FTA inputs or to simply pay prevailing duties. In that case, RoOs cannot fully reach their goal of boosting intra-FTA trade (Angeli et al., 2020). Survey-based evidence from 23 developing countries (including 13 African countries) over the period from 2010 to 2013 suggests that 35% of the most difficult non-tariff measures applied by partner countries to manufactured products concern RoOs and their related documentation requirements (International Trade Center, 2015).

Empirical evidence on the contribution of RoOs to boosting trade under preferential trade agreements is scarce due to data gaps. In Africa, no RECs currently collect data on preference utilization. The literature relies mainly on qualitative indicators, such as restrictiveness indices of the RoOs. These indices are mainly based on features and observations from the legal text of the RoOs rather than their actual effects (Estevadeordal et al., 2011; Harris, 2007; Cadot et al., 2006; Estevadeordal, 2000). The calculation of these indices is questionable, since the underlying methodology varies from one author to another. By construction, the indices can also diverge significantly between products and sectors. Despite their weaknesses, restrictiveness indices remain valuable analytical tools for empirical studies. They reveal the extent to which RoOs facilitate or impede trade while allowing comparisons between preferential trade schemes (UNCTAD, 2019).

These notwithstanding, studies analyzing the trade impacts of RoOs have had mixed results so far. Estevadeordal and Suominem (2003) used a gravity model to investigate the impact of RoOs on aggregate trade flows for 156 countries in 2001. The authors considered nearly 100 PTA around the world. They found that restrictive RoOs undermine trade flows and counteract the liberalizing effects of PTAs. The authors also found that some regime-wide RoO provisions, such as *cumulation* and *drawback*, can boost trade and have the potential to outweigh negative RoO effects. Furthermore, at the sectoral level, the results of the study suggest that RoOs encourage greater use of intra-FTA inputs compared to extra-FTA inputs. Kim et al. (2013) used a gravity model to assess the trade effects of regime-wide RoOs with a panel dataset of 36,238 country-pairs of 151 countries for a period spanning from 1990 to 2005. Their results suggest that trade impacts from RoOs vary with the types of rules applied. Regime-wide rules, such as *cumulation* and *de minimis*, boost trade flows between members of FTAs, unlike *certification requirements*, which do not seem to produce positive trade effects. de Melo and Portugal-Perez (2014) assessed the impacts of restrictive RoOs on textile exports from 22 African countries under the United States' Africa Growth Opportunity Act (AGOA) and European Union (EU) preferential regimes. The authors found that simpler RoOs under AGOA (as compared to EU trade regimes) contributed to a faster increase in exports of apparel to the United States than those traded with the European Union.

In the absence of RoO-related data within African RECs, UNCTAD (2019) investigated utilization rates within Africa and the EU under existing preference schemes (viz., the Generalized System of Preferences of the EU, the Everything but Arms initiative, and economic partnership agreements). The analysis drew on descriptive statistics and trade trends considering EU imports from Africa that are eligible for preferences. The findings suggest a positive association between simplified RoOs in these schemes and high preference-utilization rates by African exporters. From 2009 to 2016, the rate fluctuated but stood above 90% every year, and it steadily increased from 92.2% in 2011 to 94.9% in 2014. The steady increase followed the reform of the Generalized System of Preferences of the EU, which simplified its RoOs, in particular for textiles and apparel, and became effective in 2011. However, the report also noted that many African countries have not been able to use preferences under trade schemes with their various partners, comprising Australia, Canada, Chile, the EU, India, Japan, Republic of Korea, Norway, Switzerland, Taiwan, and the US, based on 2016 data. In some instances, this was because they used their possibilities to export to their partner countries under MFN tariffs of zero. Unused preferences were found to be highest for African exports to India, the US, and the EU for products ranging from minerals, precious metals, vegetables, machinery, prepared foodstuffs, and chemicals. The situation might be easily understandable for manufactured items characterized by more complex rules. The list of products also includes primary commodities with less stringent RoOs. However, the analysis was inconclusive as to the underlying reasons for unused preferences, due mainly to data gaps at the most disaggregated levels. Preference underutilization could also be explained by the fact that African economies depend heavily on the export of unprocessed goods, which face marginal tariffs or MFN equivalent to zero in the importing markets (Bouët et al., 2020).

These outcomes notwithstanding, the consensus in the literature is that very restrictive and costly RoOs undermine their contribution to trade. As pointed out by Estevadeordal and Suominen (2003), complex and stringent RoOs may result in diversionary effects on trade and investments flows. This then raises a key question about the conditions under which RoOs create trade and boost welfare within an FTA. RoO-related costs can result from both production and administrative matters. While the former cost elements can result from various technical criteria including those emanating from souring inputs in the FTA, the latter may arise from procedures required for ascertaining compliance with the rules, which can also be exacerbated by the weak capacity of regulatory bodies, including customs authorities, especially in LDCs (Angeli et al., 2020; UNCTAD, 2019; Estevadeordal and Suominen, 2003). To minimize those costs and maximize RoO benefits, the rules should not be too complex or rigid and their implementation simplistic (UNCTAD, 2019).

3. REAPING AfCFTA BENEFITS THROUGH COST-EFFECTIVE AND WELL-FUNCTIONING RULES OF ORIGIN

3.1. Cost-Effective and Well-Functioning AfCFTA Rules of Origin: Why Does It Matter?

The AfCFTA RoOs are imperative to the success of the Agreement, as with many other preferential trade schemes. AfCFTA tariff schedules shape the structure of preference margins for goods. RoOs will determine the features of those goods that will be eligible for such treatment. The RoOs will be instrumental for preference utilization under the Agreement and will determine its outcomes with regards to trade in intermediate goods, shaping the space in which regional value chains operate and grow. Evidence from the North American Free Trade Agreement (NAFTA), for example, suggests that its RoOs played a significant role in lowering the imports of intermediate goods and inputs from non-NAFTA countries (Conconi et al., 2018). However, the full impact of NAFTA outcomes is mixed. Studies such as Sánchez (2018) and Mold and Rozo (2006) suggested that such a diversion of imports under NAFTA undermined the competitiveness of some North American industries, and led subsequently to poor welfare results, particularly for Mexico. Other authors (Hernandez-Trillo, 2018; Wisner and Epstein, 2005) found that Mexico gained from NAFTA in terms of intra-bloc trade, welfare, and real wages. These studies suggest that FTA opportunities are best harnessed with cost-effective rules and RoOs that are less harmful to trade and production.

The AfCFTA provides countries and firms with preferential tariffs. The Agreement also provides businesses with non-tariff preferences: manufacturers will have the choice of sourcing inputs from the rest of the world. Producing and trading under the AfCFTA will then depend partly on the costs and benefits associated with its preferential tariff utilization, in which RoOs are critical determinants. As discussed in Section 2.2, costly and restrictive RoOs undermine trade, especially for intermediate products, and therefore may become technical barriers. Within the TFTA, RoOs are among the most frequent complaints registered on the non-tariff barriers' reporting, monitoring, and eliminating mechanism (UNCTAD, 2019). RoO compliance costs in preferential trade agreements could represent between 3% and 5% of final product prices (Cadot and de Melo, 2008). Keck and Lendle (2012) suggest that the fixed-cost element of compliance could range between US$14 and US$1500.

According to Cadot and Ing (2016) despite being relatively simple, flexible, and transparent, the Association of Southeast Asian Nations (ASEAN) RoOs inhibit regional trade by roughly one-quarter of its MFN tariffs. In other words, the ASEAN RoOs nullify one-quarter of the effect of tariff preference margins. No matter how low tariffs could be under the AfCFTA, if RoO compliance costs are excessively high, manufacturers are likely to imports inputs from non-AfCFTA markets. These costs are often amplified by the high trade-facilitation burdens that prevail across Africa. There is a need to keep compliance costs associated with AfCFTA RoOs at a minimum for businesses. This is critical for SMEs which make up the bulk of Africa's business sector but have limited capacity to comply with stringent RoOs (Draper et al., 2016).

Africa is relatively well endowed with natural resources from agricultural products, minerals, and energy resources. If they are cost efficient, AfCFTA RoOs and tariff preferences will contribute to incentivizing producers to source much of their inputs across the continent. The RoOs are also important for addressing tariff-related issues emanating from the overlapping memberships of RECs. For example, tea

exports from EAC members to Egypt, a leading tea importer in Africa, are subject to varying tariffs. If the tea originates from Kenya—a COMESA member, like Egypt—it is subject to the preferential tariffs of this REC. Yet, tea sourced from Tanzania—a member of EAC, like Kenya, and SADC, but not a member of COMESA—is subject to MFN. Such disparity may disrupt the functioning of EAC trade integration (UNCTAD, 2019). The AfCFTA should address such challenges if it is to be cost-effectively implemented. The same analysis by UNCTAD (2019) provided evidence through cases studies on the potential of integrated and harmonized RoOs under the AfCFTA to support the development of RVCs in the following sectors: tea, cocoa and chocolate products, cotton textiles and apparel, beverages, cement, and the automotive industry. The study recommended the adoption of cost-effective AfCFTA RoOs, that is, rules that are simple (in the sense of being clear and understandable), transparent, predictable, and trade facilitating for businesses and trade operators. These are key features of cost-effective AfCFTA RoOs.

3.2. Scope of AfCFTA Rules of Origin: An Overview[5]

The modalities of tariff liberalization under the AfCFTA require that 90% of tariff lines (the so-called non-sensitive products) will be fully liberalized over a 10-year period for LDCs and over a 5-year period for non-LDCs. Up to 7% of tariff lines that qualify as sensitive products will be fully liberalized over a 13-year period for LDCs and over 10 years for non-LDCs. The remaining 3% of tariff lines, not accounting for more than 10% of total trade, can be excluded from tariff liberalization. The AfCFTA RoOs provide a set of laws, regulations, and procedures for the minimal level of processing that should take place in the area for any manufactured product to qualify as an originating good, and therefore benefit from preferential tariffs under the Agreement.

The AfCFTA RoOs, as per Annex II of the Agreement,[6] aim to deepen market integration at both regional and continental levels, boost intra-Africa trade while promoting regional and continent-wide value chains, and foster economic transformation through industrialization. The rules are therefore expected to serve as an instrument that contributes to boosting trade among African economies. The AfCFTA RoOs adopt a hybrid approach combining main origin criteria—that is, *wholly obtained* and *substantial transformation* (Articles 4–7 of the AfCFTA Annex on RoOs)—and provisions anchored in the regime-based RoOs, such as the *minimal operations* rule (Article 7), *cumulation* (Articles 8 and 31), *principle of territoriality* (Article 6), *certification* (Articles 17 and 21), and *direct transportation* (Article 30), among others.[7]

Annex II on RoOs also makes provisions in Article 40 for dispute settlement, stating that issues among AfCFTA members arising from RoO implementation shall be settled in accordance with the AfCFTA Protocols on Rules and Procedures on the Settlement of Disputes. The Annex further requests the drafting of a number of additional RoO-related documents, including product-specific RoOs and regulations for goods produced under Special Economic Zones. By the 13th Extra Ordinary Session of the Assembly of the Union on the AfCFTA (held virtually in December 2020), AfCFTA RoOs were agreed on a significant share of tariff lines. For example, live animals (HS code Chapter 01), meat and edible meat offal (HS code Chapter 02), and dairy products (HS code Chapter 04) will be considered originating only when they are fully obtained in the AfCFTA state parties. For some other products, specific RoOs have yet to be decided: e.g., thresholds for originating or non-originating value content, changes in tariff classification, and specific manufacturing or processing operations requirements. For example, refined petroleum oils can be considered as originating when they are processed in the AfCFTA state parties from originating crude oil, or when the foreign value content does not exceed a certain threshold. At the time this paper was prepared,[8] most of the remaining provisions were drafted, but outstanding issues included RoOs for some textile items and vehicles, as well as the treatment of goods produced in Special Economic Zones.

AfCFTA product-specific RoOs adopt a hybrid approach that includes product-based rules. That is, they do not follow a general approach, for example, of applying a uniform percentage to the value content criterion, as this would make them restrictive. However, this might pose compliance challenges for the private sector, due to the complexities of navigating product-specific rules. From the perspective of public authorities, capacities—in terms of human and financial resources—will be required to enforce the rules and monitor compliance. These potential challenges can however be counterbalanced through some flexibility in the provisions provided by AfCFTA regime-wide rules, such as *cumulation, absorption, tolerance, e-certification,* and others.

3.3. Enforcing Rules of Origin in Africa: Key Challenges

3.3.1. Heterogeneity and complexity of rules of origin across Africa

There are RoO regimes under various trade agreements among African countries (Table 1 of Section 2.2) and between African countries and their trade partners worldwide. Within the continent, there are several FTAs across the RECs and other regional blocs. These encompass the COMESA FTA, the EAC Customs Union, the ECOWAS Customs Union, and the SADC FTA. Other regional agreements at sub-REC

[5]At the time we drafted this paper, the AfCFTA rules of origin negotiations were at an advanced stage, although they were not yet fully finalized. The content of this section draws heavily on discussions with selected chief negotiators and the information at our disposal.
[6]See the Agreement Establishing the African Continental Free Trade Area, Annex 2: Rules of Origin.
[7]Consolidated texts of the AfCFTA Agreement and some of its annexes can be accessed online via https://www.tralac.org/resources/our-resources/6730-continental-free-trade-area-cfta.html.
[8]As of January 2021.

levels are those of the Central African Economic and Monetary Community (CEMAC), West African Economic and Monetary Union (WAEMU), and Southern African Customs Union (SACU) (Gerout and Addo-Obiri, 2019). In addition, many countries have signed, or are in the process of signing, bilateral and multilateral agreements with global partners, including the EU, the UK, and the US, among others. At continental levels, a number of countries have entered into bilateral trade agreements.

These various trade arrangements encompass diversified RoOs ranging from more flexible regime-wide rules to more restrictive product- or sector-specific rules. Furthermore, a number of countries belong to overlapping regimes. Examples include Botswana, Lesotho, Namibia, South Africa, and Swaziland, which are all members of the SACU and SADC FTAs; Burundi and Rwanda are ECCAS members and state parties to the COMESA FTA and EAC Customs Union; and Kenya and Uganda are both members of COMESA FTA and EAC Customs Union. In addition, the EAC, COMESA, and SADC are in the process of completing the TFTA. The AfCFTA should help address some of the issues around overlapping memberships to regional trade agreements among African countries. At global levels, US–Kenya, Africa–UK, as well as Economic Partnerships Agreements are some of the upcoming trade deals with their own RoOs, adding to the complexity induced by a proliferation and overlapping memberships of trade arrangements that African countries face. This situation is often referred to as a "spaghetti bowl" that creates additional costs due to origin-dependent discrimination (Bhagwati, 1995; Gerout and Addo-Obiri, 2019).

While the AfCFTA will provide sets of RoOs that should support the harmonization of trade rules and practices among African countries, the Agreement requires that member states build on the "acquis" of RECs while considering the latter as "building blocs."[9] This raises concerns about the implementation of AfCFTA RoOs within the context of existing rules, especially where there might be conflicts. For example, regional value content requirements in COMESA may not match the tariff classification requirements prevailing under the SADC or EAC and possibly under the AfCFTA. There have been some suggestions to apply AfCFTA RoOs only to trade flows among countries that are not part of the same or any regional trade agreements, while RECs will still apply their rules. Yet even such a solution will not solve the overlapping membership issues if the AfCFTA is built on the "acquis" of the RECs. Further, this potential solution would create additional challenges to businesses targeting multiple markets, whether at REC levels or at a broader AfCFTA level. At the multilateral level, the AGOA is expected to promote US and African trade and contains uniform ad valorem percentage criteria of a minimum of 35% of local and/or regional value content, except for textiles, where a tariff classification is applied. Such a threshold at present differs from existing preferences under RECs. Under AGOA, moreover, self-certification is allowed, unlike any of the existing preferential schemes across REC FTAs and the AfCFTA. The several dissimilarities in prevailing RoOs across Africa make their harmonization nearly impossible (Gillson, 2010; Draper et al., 2016). The AfCFTA offers a continental framework that could therefore serve as an overarching framework for REC trade rules. This means that RECs should design new RoOs that are aligned with those prevailing under the AfCFTA, wherever an irreconcilable mismatch is found.

3.3.2. Costly rules of origin and other impediments to intra-Africa trade

Restrictive existing RoOs and related costs—in terms of both production and administration—across Africa are well documented. Very restrictive RoOs and stringent local content requirements might result in businesses producing noncompetitive final goods, which might also adversely affect investment decisions. High compliance costs reduce utilization offered by regional trade preferences. For example, evidence suggests that the SADC's strict "double transformation" RoOs, which require fabrics and yarn for garment manufacturing to be produced within the community, have weighed negatively on intra-regional trade in textile and garments. A key argument is that garment producers operating from the SADC are not able to source inputs of competitive quality (e.g., yarn and fabric) within the region. As a result, intra-SADC trade for textile and garments is argued to have decreased significantly in favor of garment imports from South East Asia (Iwanow, 2011). Thus, less strict RoOs, such as a "single transformation" rule, do not require any restriction on the source of materials for garment production and might be a better solution.

A key cost component of RoOs across Africa relates to the administrative requirements for compliance. Evidence from the southern African region suggests that South Africa-based Shoprite, one of Africa's largest food retailers, spent up to US$5.8 million per year to adhere to trade rules and formalities, including requirements for certificates of origin, to secure US$13.6 million in duty savings under regional trade preferences (Gillson, 2010). The same author noted that Woolworths, operating from South Africa, refrained from using SADC preferences in trading regionally produced food and clothing, but opted to pay full tariffs due to the costly process of administering RoO documentation. Administrative costs induced by RoOs are higher for complex rules driven by a product-by-product approach. This being the approach on which AfCFTA RoOs partly rely, simplifying their implementation will be a sine qua non to keep their compliance costs low. As noted by Mizuno and Takauchi (2013), if exporters face excessive RoO compliance costs, non-compliance will become a cheaper solution.

Beyond these constraints, long-standing challenges to intra-African trade persist. Critical barriers to production and regional trade, including sourcing inputs from within the continent to comply with AfCFTA RoOs, encompass several non-tariff barriers. These range from cumbersome customs procedures and other inefficient processes to numerous and non-coherent regulatory requirements. These issues are often exacerbated by inadequate transportation infrastructure across regional corridors, and significantly increase trade and production costs. In addition, the high cost of compliance to often non-harmonized standards and other technical barriers to trade are burdensome, particularly for small producers. According to UNCTAD (2019), ad valorem equivalents of Non-tariffs Barriers (NTBs) in Africa can be as high as 14% for vegetables, 11.4% for beverages and tobacco, 11.3% for machinery, and 11.1% for optical and medical devices.

[9]See, for example, Articles 5 and 18 of the Agreement Establishing the African Continental Free Trade Area.

The persistence of these impediments means that tariff preferences alone and related RoOs will be insufficient to achieve AfCFTA ambitions. In addition, NTBs and their induced costs could undermine competitive sourcing of inputs by businesses to comply with the technical requirements of AfCFTA RoOs, thus directly affecting production costs related to compliance to the rules. Provisions of regime-wide RoOs, such as direct shipment and certification requirements, depend respectively on transportation services and the capacity of regulatory authorities. Therefore, poor transportation networks in Africa and limited customs capacity make compliance with these provisions challenging. This calls for customs modernization and trade facilitation reforms through, for example, the AfCFTA and WTO Trade Facilitation Agreement (TFA). Complementary measures to address NTBs are indispensable to achieve the objectives of the agreement and increase production and intra-African trade. The implementation of the trade facilitation measures under the AfCFTA and other regional trade agreements will play a critical role in this regard.

African Continental Free Trade Area implementation will have costs for governments, as they will also have to provide the institutional framework for implementing the whole Agreement, such that the private sector can reap the benefits of liberalization throughout Africa. At the same time, much of the available literature tends to point negatively at compliance costs for administering RoOs, more from a private-sector point of view.

In recent years, administrative compliance costs have been effectively lowered and exporters have become more aware of RoO compliance as these systems spread across the globe. Certain African countries are not only in more than two regional agreements, not counting the AfCFTA, but have also concluded other agreements, e.g., Economic Partnership Agreements (EPAs) or FTAs with European countries or the US. Furthermore, and this is no excuse for excessive administrative burdens, other administrative systems (e.g., VAT) and accounting principles might require further administrative efforts, e.g., keeping records much longer than three years, to be able to show import and export documentation and submit periodic statements and accounts at any time. A well-kept accounting and document management system in an enterprise helps compliance with any requirements under the pertinent RoO regime, or under the AfCFTA.

However, documentary compliance is only one side of the coin; the other side is compliance with the RoOs themselves. For example, producers might run into trouble when they must source local, non-competitive products/inputs to meet 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 for the more expensive input as well as the burden of selling a product at a less competitive price in the worst case.

4. CONDITIONS FOR THE SUCCESSFUL IMPLEMENTATION OF AfCFTA RoOS AND POLICY PERSPECTIVES

In the light of the discussions so far, the enforcement of AfCFTA RoOs and their desired outcomes will not come automatically. Ensuring transparency and keeping associated compliance costs low will be critical. This section discusses several actions required to achieve this objective.

4.1. Promoting Efficient Administrative Procedures Through Digitalization of Trade and e-Certification of Origin

As discussed throughout the paper, trade practices partly determine the administrative costs associated with RoO compliance. Efficiency in these practices can be increased through the application of technologies, which range from paperless trading to digitalization of supply chains and the adoption of e-certificates of origin in the particular case of RoOs. Therefore, the trade performance of African economies, including under the AfCFTA, will increasingly be determined by the extent to which digitalization is mainstreamed in their trade facilitation reforms. The AfCFTA online non-tariff barrier reporting, monitoring, and eliminating mechanism,[10] for example, is a practical online tool available to traders and businesses moving goods across the continent to report any challenges including those related to the RoOs they encounter.[11] The adoption of such an online mechanism within the AfCFTA framework reflects the deliberate efforts of African trade officials to mainstream digitalization within trade practices.

According to the UN Global Survey on Digital and Sustainable Trade Facilitation 2019,[12] the group of sub-Saharan African countries implemented 21.5% and 44.4% of *cross-border paperless trade*[13] and *paperless trade*[14] measures, respectively, under the WTO TFA, which entered into force in 2017. These figures were however well below the respective global implementation rates of 36.2% and 62.8%. Digitalization of

[10]The online tool is available at https://tradebarriers.africa/.

[11]In concrete terms, the platform establishes a reporting, monitoring, and elimination mechanism where the private sector can file complaints on some specific trade obstacles. The complaint is then transmitted to the government of the responsible trading partner to react to the complaint and resolve it within concrete timelines. The reported NTBs also feed into national and regional trade policy improvements. This web-based platform will enhance transparency, easy follow-up, and the resolution of reported and identified NTBs.

[12]The UN Global Survey on Digital and Sustainable Trade Facilitation, Online at www.untfsurvey.org, 2019.

[13]*Cross-border paperless trade* measures in the UN Survey account for laws and regulations for electronic transactions, paperless collection of payments from a documentary letter of credit, electronic exchanges of SPS Certificates, recognized certification authorities, and electronic exchanges of customs declarations.

[14]*Paperless trade* measures account for automated customs systems, electronic applications for custom refunds, e-payments of customs duties and fees, electronic application for and issuance of preferential certificates of origin, electronic submissions of air cargo manifests, internet connections available to customs and other trade control agencies, electronic single-window systems, electronic submissions of customs declarations, and electronic applications for import and export permits.

trade processes should be accelerated across African economies, to increase their trade performance. Digitalizing intra-African trade has the potential to streamline administrative procedures and improve security while reducing the delays and costs often induced by physical procedures (Parshotam, 2020).

RoO administrative requirements can be costly if the process is not efficient. In exporting countries, businesses must prove the originating status of their goods through a set of documents, including certificates of origin, to enjoy AfCFTA preferential tariffs. In the partner importing country, customs authorities or any competent agency might request further verification upon the importation of goods in case they have doubt on the exporting country, or if they do not trust the process of issuance of the certificate. To keep the process between both countries efficient, integrated electronic systems shall be encouraged among AfCFTA members. This could be even more efficient if countries adopt Electronic Certification of Origin (e-certification of origin), which can increase efficiency and reduce administrative costs. E-certification of origin allows manufacturers and exporters to use a dedicated web-based platform to electronically submit all relevant documents for the issuance of a certificate of origin. The process allows for security and traceability, in addition to the efficiency of electronically-based systems. It also permits the private sector to avoid shipping or carrying heavy physical paper documents, which can increase the administrative costs of RoO compliance. In addition, e-certification of origin, by lowering compliance costs and delays, can help small businesses level the playing field to better integrate regional value chains (Parshotam, 2020).

In the SADC for example, it is argued that up to 1600 documents can accompany a truck across a SADC border as part of the administrative requirements to comply with trade rules, including RoOs (Gillson, 2010). In 2014, The COMESA adopted e-Certificate of Origin (eCO) to replace manual certificates. In June 2020, during the COVID-19 pandemic and its supply-chain disruptions, all the member states of the region agreed to start implementing eCO under their regional trade agreements.[15] The eCO consists of the following: (i) end-to-end procedures for trader registration and renewal; (ii) application, issuance checking, and verification of the certificate of origin; and (iii) identification of designated issuing authorities and their signatories. Similar systems have proven to be efficient across the European Union (UNCTAD, 2019) and are being set up in SADC, WAEMU, and ECCAS regions. The AfCFTA secretariat could develop a platform for AfCFTA e-certification of origin that will serve the continental area when it comes to RoO administrative procedures. Alternatively, RECs could develop and integrate such AfCFTA-related e-certification systems to facilitate the verification of AfCFTA RoOs among their members. These platforms will allow authorities in importing country to first consult the e-system before submitting a verification request to the exporting country if doubt persists. Such a system will serve as a major trade-facilitating instrument and permit time-efficient management of RoO administrative procedures.

Fortunately, the AfCFTA Agreement has provisions for the use of e-certificate of origin[16] to be issued and accepted according to each country's national legislation. Although the adoption of e-certificates is not compulsory within the Agreement, existing initiatives across RECs, as well as the move to digitalizing trade processes and the cost-saving advantages of such procedures, call for adoption of eCOs across the continent. This entails building capacity and consensus around e-certification, adopting new technologies, and investing in the implementation of such a system. Capacity building also includes preventing fraud around the originating status in countries through clearance and inspections. Educating the private sector in preventing fraud through the benefits and administrative aspects of operating within the AfCFTA and complying with its RoOs is a prerequisite in addition to enhancing cooperation and trust between the private sector and government agencies in charge of the RoOs.

4.2. Establishing an Integrated Institutional Mechanism to Enforce the Implementation and Monitoring of AfCFTA RoOs

The implementation of RoOs requires strong institutional capacity, in terms of technical competence and the quantity of human resources, which are often limited in Africa, especially in the LDCs (Draper et al., 2016). AfCFTA RoOs are multidimensional and cut across various sectors and ministries. While the AfCFTA RoO process is mainly led at national levels by ministries in charge of trade and customs authorities, the scope of RoOs clearly involves several stakeholders. For example, at the government level, rules related to agro-food products might involve ministries in charge of trade and agriculture. Ministries of mining should play a role in the implementation of RoOs related to mineral-based industrial products. From the perspective of the private sector, RoO matters affect manufacturers, exporters, and importers from almost all sectors. Therefore, national-level institutional arrangements for implementing and monitoring AfCFTA RoOs should include representatives of the relevant public and private entities as much as possible.

In several countries, AfCFTA national committees (an obligation of the AfCFTA Agreement) are being set up with a mandate to coordinate the implementation of the Agreement.[17] The mandate of these committees shall cover matters related to AfCFTA RoOs, and their composition shall include members of various national agencies, customs authorities, and businesses. These institutional arrangements shall be aligned with national trade facilitation committees (under WTO FTA) to ensure cooperation. The institutional mechanism shall rely on regular consultations with businesses, through formal and informal public–private platforms. This will be instrumental to mitigating

[15]See COMESA press release of 18/06/20 at https://www.comesa.int/over-10-member-states-ready-to-pilot-the-comesa-electronic-certificate-of-origin/ (accessed on 09/09/2020).
[16]See Annex 2 of the AfCFTA Agreement on Rules of Origin. Article 17 [1.(a)].
[17]Examples include Cote d'Ivoire, Guinea, Togo, Cameroon among others.

the challenges faced by businesses with a view to reducing any burdens caused by the rules. The dispute settlement mechanism under the AfCFTA shall also be binding, and countries must comply with the decisions emanating from it.

At the continental level, and per the AfCFTA Agreement, the AfCFTA secretariat based in Accra will oversee and coordinate the implementation of the Agreement. The designated committee on RoOs is expected to address issues related to the rules. The secretariat should also ensure transparency regarding the RoOs by making sure that countries adopt the relevant domestic procedures and promulgate and notify laws, regulations, and administrative procedures related to AfCFTA RoOs. The secretariat should collect relevant data to calculate and disseminate utilization rates under AfCFTA RoOs, which, at present, do not exist in the RECs. In this regard, a model developed by the WTO Technical Committee on RoOs (WTO, 2016) to calculate utilization rates could be used and adapted to the AfCFTA context. The dissemination of such statistics could help determine any cause of underutilization for corrective measures or to inform policymaking at continental, regional, or domestic levels.

The institutional mechanism for facilitating the implementation and monitoring of AfCFTA RoOs can also profit from the established expertise of the RECs, as private-sector operators already have the experience of how to comply with FTAs or regional agreements. REC secretariats should also be helpful in implementing the AfCFTA RoOs. For example, the AfCFTA secretariat could create a focal point in each REC secretariat which would help to ensure that the instruments of the AfCFTA RoOs come closer to the regions.

All the parties to the AfCFTA need to develop and implement an effective monitoring and evaluation system to track progress on the implementation and to ensure that the Agreement's objectives are realized. This is obviously going beyond RoOs, but would allow all major commitments to be monitored and evaluated on a periodic basis. As previously highlighted in this paper, the AfCFTA Committee on RoOs should follow-up on the implementation of the RoOs and application modalities at least yearly.

4.3. Building the Capacity of Relevant Stakeholders on AfCFTA RoOs

Although countries have been dealing with RoO issues through existing regional agreements at the REC level and within the context of multilateral agreements with the rest of the world, capacity building on AfCFTA RoOs is necessary at both regional and domestic levels to ensure they are well implemented. For trade officials and customs authorities, this is a prerequisite to enable them to verify compliance and provide support to the private sector. Capacity building is also needed for businesses, the backbone of production and trade, to understand the implications of AfCFTA RoOs and their interplay with existing trade rules. In addition, for the private sector to understand the RoOs and use them cost-efficiently, translating the legal texts into different languages at regional and national levels could be desirable.

The capacity-building activities and their scope should be preceded by needs assessments (for the overall AfCFTA implementation, including RoOs) at national and regional levels. Dedicated programs, including online tools to raise awareness and build the capacity of various stakeholders (public and private) on matters related to the implementation of AfCFTA RoOs (their scope, requirements, and the application of law), are to be in place. Donor agencies have been active within Africa in the provision of trade and development co-operation projects and activities. For instance, the EU assists ACP countries through Tradecom I and II projects, but also deploys considerable effort into EPA implementation.

Capacity building will cover all sorts of available tools, from awareness raising to printed media and electronic tools (online toolboxes, trainings, materials, and information). UNCTAD (2019) proposes a digital toolbox for RoOs that can be easily developed under the AfCFTA framework. Such a toolbox will include online training materials, a web-based information repository of the provisions of AfCFTA RoOs, information sharing, and a help desk, among others. The digital platform could be translated in the main local languages to reach a wide range of users while ensuring they are business-friendly. Such a digital toolbox could be developed by the AfCFTA national implementation committees at the national level, by RECs at the regional level, and by the AfCFTA secretariat at the continental level.

4.4. Providing Targeted Support to Vulnerable Groups of Countries (LDCs) and Businesses (SMEs)

The capacity to implement trade agreements and harness their benefits is usually limited in LDCs, at least compared to non-LDCs. Under the AfCFTA, LDCs have preferential treatment when it comes to the period of liberalization of goods. The scheme provides for a longer period of tariff dismantlement for LDCs in response to their legitimate concerns of suffering more from cost adjustments such as tariff revenue losses for governments and output contraction in less competitive sectors (Saygili et al., 2018). Key issues raised by LDCs when it comes to risks related to the implementation of the AfCFTA include a weaker manufacturing base and limited capacity to understand and apply trade instruments and rules, including RoOs. Also, landlocked LDCs (14 African countries among the 33 LDCs) face higher trade costs, which undermine their competitiveness within the AfCFTA. LDCs have not been provided with differentiated RoOs, which would have considered their relatively weak and less sophisticated productive capacities. In this context, technical assistance programs under the AfCFTA, especially on RoOs, should first and foremost target LDCs. At the global level, for example, the Enhanced Integrated Framework, a multi-donor fund based at the WTO, and the WTO's Aid for Trade, support LDCs by addressing trade constraints with a view to better integrating Global Value Chains (GVCs). Such frameworks with similar objectives can be created under the scope of the AfCFTA and hosted by its secretariat: its ultimate objective would be to provide financial and technical support for African LDCs to help them cope with trade-related constraints and strengthen their integration to RVCs.

Whether in LDCs or non-LDCs, and no matter how minimal they are, compliance costs could impede the ability of SMEs to adhere to AfCFTA RoOs. Yet the AfCFTA is expected to expand or create new market opportunities at regional levels for SMEs and stimulate local entrepreneurship. Evidence from the EAC suggests that SMEs suffer most from issues related to administrative procedures and compliance to RoOs (Draper et al., 2016). Capacity building will be critical to this group in the form of direct financial support provided through group certification schemes, business communities such as chambers of commerce and industry, associations of traders and manufacturers, customs brokers, and governments-dedicated funds. Further, dedicated online tools for e-certification of RoOs can provide SMEs with the opportunity to minimize compliance costs.

4.5. Harmonizing Rules of Origin to Remain a Top Priority

As previously discussed, RoO regimes under various trade agreements among African countries are heterogeneous. This could undermine well-functioning AfCFTA RoOs. The AfCFTA agreement considers RECs as "building blocs," which implicitly implies that existing trade rules at regional levels should be maintained. However, with regard to RoOs, this seems like a daunting if not impossible task. Diverging provisions of RoO criteria among RECs (for example, the regional value content in some RECs versus tariff classifications in others) might not be reconcilable. Such divergence will push the private sector to produce and trade in a specific region, which can then undermine AfCFTA objectives to promote more continental trade. In this context, RECs and customs unions across Africa should develop new sets of RoOs that will then be aligned with the AfCFTA RoO provisions. These will contribute to better harmonization and efficient use of trade rules and practices. Such a solution also helps address current issues around overlapping and the proliferation of RoOs.

4.6. Implementing Trade Facilitation Through Complementary Measures

Rules of origin and tariff preferences alone will be insufficient to deliver the potential gains of the AfCFTA. Not all RoO compliance costs stem from the rules; much of these costs arise from customs procedures and requirements upon importation or exportation. In this sense, the implementation of trade facilitation measures under the AfCFTA and other regional and multilateral trade agreements (including WTO trade facilitation commitments) will play a critical role in lowering the costs associated with NTBs, which undermine the competitiveness of African economies. No matter how easy or smooth RoO compliance may be, it will be necessary to enact complementary measures to address trade and production costs in Africa. Such measures include building productive capacities, facilitating trade, addressing other non-tariff barriers, and easing the business environment to increase the overall competitiveness of African economies.

Some countries already have comprehensive trade portals or "one-stop shops" for investment promotion (typically under investment promotion agencies), export promotion agencies, and ministries of commerce or economy. Customs authorities and competent import or export agencies also maintain good online tools and information. Botswana is a good example of a "one-stop shop." Through an integrated online platform, the country's Investment and Trade Promotion Authority plays a vital role promoting and attracting investment, exports, and development (see https://www.gobotswana.com/). These success stories and others shall be documented and shared across the continent.

5. CONCLUSION

Cost-effective and well-functioning AfCFTA RoOs will be instrumental to realizing the goals of the AfCFTA. We argued that many barriers in the AfCFTA framework will trigger non-compliance as the safest and cheapest solution for producers and exporters (in terms of documentation and production burdens to meet the RoOs). Empirical evidence suggests that RoOs are essential to avoid the misuse of preferential provisions, including transshipment from third countries. If they are too stringent and costly, RoOs will disincentive businesses to produce and trade under the AfCFTA preferences. A hybrid approach to AfCFTA RoOs that combines a set of regime-wide and product-specific rules requires great expertise and knowledge from both public and private actors. Such challenges are heightened by heterogeneity and costly trade rules and practices prevailing across Africa.

We highlighted a number of proposals to ensure that the AfCFTA RoOs are functional and cost-effective. First, promoting efficient administrative procedures by digitalizing trade rules and practices will be critical. This implies adopting new technologies in trade-facilitation reforms across the continent, including through the WTO TFA. Promoting e-certification of origin should be broadened across the continent, drawing on the experiences and lessons learned across and beyond Africa. Second, there is a need to build strong and integrated institutional arrangements at the national, regional, and continental levels to ensure coordinated implementation and monitoring for AfCFTA RoOs. Capacity building and training for both public and private actors through use of a digital toolbox will be instrumental to ensure that RoO compliance and verification are done efficiently. Third, for countries with limited capacities, in particular LDCs, and for groups of stakeholders such as SMEs, targeted financial and technical support should be provided. Fourth, harmonizing RoOs is critical, to make the rules homogeneous across the continent. Preferably, RECs shall revise their RoOs and align them with those prevailing within the AfCFTA. Finally, enacting measures to address NTBs will complement efforts to implement cost-effective RoOs. Trade facilitation measures are as crucial as RoOs. Implementation is vital for RoO systems, to allow and enable businesses to profit from the benefits of integrated markets through tariff concessions.

These efforts require coordination at all levels and strong donor and inter-agency collaboration. It is crucial to raise awareness among stakeholders regarding the implementation of the Agreement and its modalities on RoOs from the date of entry into force. Other constraints in Africa should be addressed for all parties to the AfCFTA if the continent is to seize the opportunities available. In principle, governments and private-sector stakeholders across Africa are already using regional agreements and should be familiar with the RoOs and opportunities that emerge with the AfCFTA. With additional needs from the AfCFTA fulfilled, they will be better able to deliver on the implementation side of the Agreement.

CONFLICTS OF INTEREST

The authors declare they have no conflicts of interest

AUTHORS' CONTRIBUTION

The authors confirm collective responsibility for the following: study conceptualization and design, formal analysis, and writing of the manuscript.

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DISCLAIMER

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