



Rules of Origin in EU-Africa Trade

Practical Implications for Economic Operators

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Introduction by the editors

The study has been commissioned by the Sector Project Trade and Investment for Sustainable Development of Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH. The Sector Project operates as a partner for the German Federal Ministry for Economic Cooperation and Development (BMZ) since 2002 and mainly operates in two closely connected fields of activity: advising BMZ on development-oriented trade policy and approaches, and instruments for implementing trade-related development cooperation.

Trade as a key driver to sustainable economic growth and prosperity is a cross-cutting issue that is structurally embedded in the policymaking and portfolio design of German development cooperation, and development issues are integrated into trade policy. The main goal of Germany's activities is to support developing countries to achieve the anticipated positive results for employment and poverty reduction related to participation in world trade. Crucial factors here include the way in which international rules relating to trade are structured, uniform policies in developing countries and industrialised countries (policy coherence) as well as structural requirements in the developing countries.

Rules of origin (RoO) are laws, regulations, and procedures used to determine the country of origin of an imported product. The existence of preferential RoO makes preferential access of developing countries to the markets of industrialized countries possible. Thereby, RoO contribute to enhancing the competitiveness of developing countries' products on the markets of preference-granting countries. However, the requirements associated with rules of origin can also pose a variety of challenges for developing countries, such as e.g., limited sourcing options for inputs or high administrative costs. In some cases, compliance with RoO requirements constitute a barrier to beneficial trade.

The aim of the study is to investigate the relationship between rules of origin and the promotion of trade between African countries and the EU, under existing EU preferential schemes accessible to African countries. This study explores the opportunities and challenges created by such rules.

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Abbreviations

ACP	African, Caribbean and Pacific
AEC	African Economic Community
AfCFTA	African Continental Free Trade Area
AfDB	African Development Bank
AFTA	ASEAN Free Trade Area
AGOA	African Growth and Opportunity Act
ALW	Allowance to Change in Tariff Classification
ARII	Africa Regional Integration Index
ASEAN	Association of Southeast Asian Nations
AU	African Union
BMZ	German Federal Ministry for Economic Cooperation and Development
CAGR	Compound Annual Growth Rate
CC	Change From Any Other Chapter
CEFTA	Central European Free Trade Agreement
CET	Common External Tariff
COMESA	Common Market for Eastern and Southern Africa
CTH	Change in Tariff Heading
CTI	Change From Any Other Tariff Item
CTSH	Change From Any Other Subheading
CU	Customs Union
EAC	East African Community
EACJ	East African Court of Justice
EBA	Everything But Arms
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EFTA	European Free Trade Association
EPA	Economic Partnership Agreements
ESA	Eastern and Southern Africa
ETLS	ECOWAS Trade Liberalising Scheme
EU	European Union
EUR	Euro
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
GSP	General Scheme of Preferences
GSP +	General Scheme of Preferences Plus
GVC	Global Value Chain
HS	Harmonised System
iEPA	Interim Economic Partnership Agreement
IPR	Intellectual Property Right
ITC	International Trade Centre
LDC	Least Developed Country
MERCOSUR	Mercado Común del Sur
MFN	Most-Favoured Nation

NAFTA	North American Free Trade Agreement
NC	No change in Tariff Classification
NPRoO	Non-Preferential Rules of Origin
NTB	Non-Tariff Barrier
OCTs	Overseas Countries and Territories
PEM	Pan-Euro-Mediterranean
PRoO	Preferential Rules of Origin
PSR	Product Specific Rules
PTA	Preferential Trade Agreement
PUR	Preference Utilisation Rate
RCEP	Regional Comprehensive Economic Partnership
REC	Regional Economic Community
REX	Registered Exporter System
ROF	Rules of Origin Facilitator
RoO	Rules of Origin
ROW	Rest of the World
RWR	Regime Wide Rules
RTA	Regional Trade Agreement
RVC	Value Added Content
SAARC	South Asian Association for Regional Cooperation
SACU	Southern African Customs Union
SADC	Southern African Development Community
SAFTA	South Asian Free Trade Area
SP	Specified Processes
SSA	Sub Saharan Africa
UEMOA	Union Économique et Monétaire Ouest Africaine
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
USD	United States Dollar
WA-RISP	West Africa Regional Integration Strategy Paper
WCO	World Customs Organisation
WO	Wholly Obtained
WTO	World Trade Organisation

Executive Summary

Rules of Origin in different EU preferential trading systems

Rules of origin (RoO) are laws, regulations, and procedures used to determine the national source of an imported product in the context of international trade. Preferential Rules of Origin (PRoO) are necessary for all Preferential Trade Agreements (PTAs). PRoO prevent trade deflection in PTAs, that is it stops imports from entering via the member with the lowest most-favoured nation (MFN) tariff to then be re-exported within the area to members with higher MFN tariffs.¹

Africa and the European Union have a longstanding trading relationship, with the EU being Africa's largest trading partner. Currently, African countries can export to the European Union (EU) under three major preferential systems: the Generalised Scheme of Preferences (GSP), the Economic Partnership Agreements (EPAs), and the Association Agreements. The EU's GSP is structured around three core arrangements namely the Standard GSP, GSP+ and the Everything But Arms (EBA) schemes. The Standard GSP is applicable to low and lower-middle-income countries and includes a partial or complete liberalisation of tariffs on approximately two-thirds of tariff lines (European Commission, n.d.). GSP+, on the other hand, phases out the tariff reductions applicable under the Standard GSP for low and lower-middle-income countries that implement 27 international conventions related to human and labour rights, environmental and climate protection, and good governance (European Commission, n.d.). Finally, the EBA targets Least Developed Countries (LDCs), offering them duty-free and quota-free market access to the EU on all products except for arms and ammunition.

The study analyses in detail the evidence to date on the effects that EU RoO have on concrete regional sourcing for international value chains in Africa and the opportunities and challenges that companies face to comply with RoO when exporting to the EU. This encompasses a brief review of the current applicable RoO in EU trade arrangements with Africa and an evaluation of their general restrictiveness. The study shall furthermore analyse the challenges of African actors in fulfilling the administrative requirements of RoO in trade arrangements with the EU. This includes the challenges prevalent under GSP and the Economic Partnership Agreements, as well as the Registered Exporter system (REX) applicable under the EU GSP scheme since 2017.

The utilisation of EU preferences in Africa

Utilisation rates of African LDCs when exporting to the EU are heterogenous across sectors. In comparing the Preference Utilisation Rate (PUR) between African LDCs and developing countries, it is found that LDCs have a greater PUR in certain products. Products from the mineral sector are the EU's largest imports from African LDCs amounting to USD 4.5 billion in 2021, and a PUR of 96 % for LDCs. In contrast, developing countries have a significantly lower PUR of 24 %. Likewise, when it comes to precious stones, the EU's third most imported products from African LDCs, the

¹ Assuring that non-members do not benefit from market access privileges intended only for members can be thought of as the authentication function of ROO.

PUR is 47 % while that from developing countries averages 18 %. From 2019 to 2021, African developing countries, including African least developed countries, have increased their preferential utilisation rate with the EU.

Rwanda's exports under the EBA are largely concentrated in the agricultural sector, with the EU importing nearly EUR 51.7 million worth of vegetable products from Rwanda. For vegetable products, Rwanda has a near-perfect PUR of 99%. Meeting the origin requirements within such sectors remains easy due to the simplicity of the Wholly Obtained (WO) rules. Rwanda equally has high PURs in sectors such as chemical products (95%) and textile and apparel (93%) whereby it is able to meet the rules on almost similar levels to other developing countries. However, in the prepared foodstuff and beverages, and woods and articles of wood sectors, there is a considerable gap between Rwanda's PUR and the average PUR of other developing countries. This could potentially highlight that Rwanda's manufacturers do not yet have sufficient administrative capacity to meet the RoO in those sectors. Nonetheless, it is worth noting that in contrast to other GSP schemes offered by other GSP donor countries, Rwanda showcases greater use of PURs under the EU GSP.

Madagascar has a high PUR for numerous products under its EPA with the EU. Madagascar's largest exports to the EU in this respect are vegetable products which have a PUR of 95%. It records a slightly lower PUR than other developing countries, however, for which the average PUR is 97%. This is followed by the exports of textile and textile articles, which have a high PUR of 96%. Madagascar outperforms other developing countries regarding the use of preferences in this sector. Other sectors that record high PURs include prepared foodstuff (100%), live animals and products (100%), and mineral products (99%), among others. Overall, Madagascar has a well-diversified export base to the EU.

When comparing PURs under the EU GSP and the US Africa Growth Opportunity Act (AGOA), numerous studies find that the more flexible and generous RoO under AGOA resulted in greater utilisation rates as well as greater volumes of exports to the US. The textiles and apparel sector is generally perceived to have complex RoOs under the EU GSP on account of the range of product-specific criteria that exist for products in this sector and the fact that textile and apparel do not benefit from general tolerance rules applicable to other products. On the other, under the US AGOA, LDCs can procure fabric and yarn from any other country and still meet the RoO requirements when exporting final products to the US (Kommerskollegium, 2012). However, in recent years, trade under the EBA has increased considerably. EU imports under the EBA increased from EUR 17.1 billion in 2014 to EUR 25.2 billion in 2019, representing a 47% rise, notably after the elimination of the double transformation rule in textiles and apparel starting in 2011 (European Commission, n.d.). According to Sytsma (2022), the increased leniency of the EU's RoO led to considerable gains for exporting firms in Bangladesh where average export earnings increased by around 30%.

Impact of Rules of Origin on trade flows

Unlike tariffs, which incur a direct cost in terms of duties paid, RoO inflicts indirect costs resulting from the need to comply with RoO requirements (compliance cost). The economics of RoO in PTAs is straightforward: it is only in the interest of exporters to request preferential status if the preferential margin (usually equal to the applied tariff MFN rate) exceeds the costs of compliance. Using firm-level transaction data for Bangladesh, Sytsma (2022) estimates that RoO compliance costs under double-transformation in textiles and apparel amounted to $\frac{3}{4}$ of the preferential margin. Cadot *et al.* (2014) use Colombian firm data to explore the determinants of preference utilisation. They find that preference utilisation is higher for larger firms but lower for those that use wider sourcing of intermediates. They also find that preference utilisation correlates strongly with export growth and more so for large firms. They estimate that large firms can more easily absorb fixed costs, e.g., through more abundant human and IT accounting resources than small firms. (Sytsma, 2022)

Case study evidence also suggests that compliance costs can also be high for firms exporting to several markets under different PTAs. For example, in the case of Shoprite, a South African retailer exporting to countries in Southern and Eastern Africa, the company estimated costs of compliance at \$5.8 million with a breakdown of 40% for staff to maintain customs data, 40% on in-house clearing and forwarding and 20% on the maintenance of a library to demonstrate compliance with rules of origin (Gillson, 2012).

The impact of RoOs on trade flows is influenced by a range of factors, including the market structure of countries, the complexity of the RoO as well as the costs associated with compliance with RoO (Augier, Gasiorek, & Lai-Tong, 2005). There is significant literature on the ways in which RoO constrain trade. For instance, a study conducted by Augier, Gasiorek, & Lai-Tong, looking at the impact of RoO for three regional blocs (EU, CEFTA and EFTA) between 1995 to 1999, shows that in the absence of provisions allowing for cumulation, RoO can constrain trade. Moreover, the study also revealed evidence indicating that the lack of cumulation provisions has a greater bearing on intermediate trade than manufacturing trade. Nonetheless, the higher the tariffs, the lower the impact that provisions of cumulation will entail (Augier, Gasiorek, & Lai-Tong, 2005).

RoO create intended and unintended effects on trade. If RoO are too strict, imports necessary for domestic production and exports will be cut off. If too lenient, domestic producers will not be protected from foreign competition and otherwise forthcoming foreign direct investment (FDI) may not materialise. The objectives are also difficult to reconcile because strict RoO in the EU will raise the compliance costs of African exporters, and become difficult to meet, curtailing the benefits of preferential access. Moreover, in supply chains, regional and non-regional, inflexible origin requirements are an obstacle to the imports of intermediates (over half of world trade is in intermediate goods) necessary for strong export growth, at least up to the present.

The flexibility of RoO under the European Union-Eastern and Southern Africa EPA (EU-ESA-EPA) and the provisions of cumulation have given manufacturers in the ESA countries greater opportunities regarding sourcing inputs and organising their supply chains (LSE, 2021). In the

ex-post review of the EU-ESA EPA, it was found that certain countries do benefit from the cumulation provisions in the Agreement. For instance, the customs authorities in Mauritius and Seychelles indicated that exporters use provisions on bilateral cumulation in the manufacturing of products such as prepared or preserved fish (HS 1604) and vanilla pods (HS 08905), among others (LSE, 2021). Nonetheless, overall, the levels of cumulation remain low between EU-ESA African countries. One of the challenges that was identified was that many countries in the region find it difficult to cumulate diagonally. To cumulate diagonally, countries are required to sign an agreement on administrative cooperation. However, ESA countries have found the conclusion of an agreement to be burdensome (LSE, 2021).

Rules of origin can play a role in promoting economic integration on the continent and advancing regional value chains. In the case of the EPAs, one of the ways in which provisions on RoO have influenced regional value chains relates to the provisions on cumulation. Regional EPAs, such as the EU-ESA EPA contain provisions not only allowing bilateral cumulation with the EU but equally diagonal cumulation with other Parties to the EPA and other African Caribbean Pacific (ACP) EPA states.

Administrative burden created by RoO

Trade, under, the different preferential market access terms with the EU is subject to several administrative requirements, including those related to RoO. However, the costs associated with RoO documentation and administrative requirements are considered a factor hindering the utilisation of preferences. Prior to the self-certification mechanisms and the non-alteration principle, the administrative challenges of meeting the RoO requirements under EU trade preferences were much harder to comply with. In a bid to simplify the RoO under the EU GSP arrangements and improve the utilisation rates of trade preferences under these arrangements, the rules were reviewed and simplified in November 2010 (Adami, McGarry, & Ugaz, 2011). With the new flexibilities brought about by the non-alteration principle, documentary evidence related to transport is significantly reduced. The reforms undertaken in this respect have responded to the challenges encountered by traders.

Likewise, rules under the EPAs have become more flexible as well. In the SADC-EPA or the EU-Cote d'Ivoire EPA, the rules pertaining to transportation are more lenient, requiring non-alteration as opposed to direct transportation (European Commission, n.d.). As such the EPA participants are allowed to tranship, store and split consignments in third-party countries and still qualify for originating status. The rules on 'non-alteration' are much simpler for exporters to meet. Furthermore, the introduction of the REX system has also simplified export formalities by enabling registered exporters to self-certify the preferential origin of their products. Nonetheless, certain challenges persist owing largely to the inadequate infrastructure and capabilities in certain African countries. Some procedural issues encountered include high fees to be paid, redundant documentation, and other forms of informal payments.

Lessons learnt

As Africa aims to advance economic integration on the continent, there are several lessons that can be learned from the experience with EU RoO in the negotiation of harmonized RoO under the Regional Economic Communities (RECs) implementing the African Continental Free Trade Area (AfCFTA). The complexity of the EU's RoO has been one of the major challenges for African exporters trading with the EU. As such, to increase intra-regional trade, the AfCFTA and the RECs should aim to simplify RoO provided that reduced complexity does not detract from the objective of preventing transshipment among partners.

Secondly, African countries must harmonise RoO for preferential trade under the AfCFTA. Evidence shows that exporters face high RoO compliance costs when operating in numerous markets with differing rules and criteria. While EU RoO with African countries is generally similar, there are some variations depending on the preferential scheme. This can complicate trade for exporters.

Finally, the complexity of EU RoO and the difficulty of African countries in meeting these rules also point to the need for capacity building among African manufacturers and exporters. Learning from the experience of the EU RoO, the African Union in the context of the AfCFTA and the various RECs should prioritise capacity-building exercises for African manufacturers and exporters. This requires providing the necessary technical assistance to help them understand and comply with RoO.

Recommendations

The study makes seven broad recommendations:

- 1. Facilitate regional trade through flexible cumulation rules.** African countries can only cumulate under the EPAs. At present only 14 African countries are Parties to EPAs so most African countries are excluded from cumulation which prevents them from sourcing inputs from major economic powerhouses in the region. It is therefore recommended that the EU reviews its provisions on cumulation in favour of greater flexibility.
- 2. Remove RoO for products with “tariff nuisance”.** It is recommended for RoO to be dispensed with for products where preferential margins are in the “tariff nuisance” range, i.e., less than 2%. This will likely boost trade between the EU and African countries, as it will simplify customs procedures and reduce the administrative burden on exporters and time for customs officials to other tasks.
- 3. Apply PSRs for a limited range of products (sensitive products).** With the reforms brought to the GSP in 2010, RoO under the EU GSP were simplified. Nonetheless, many PSRs continue

to be applicable under the schemes as well as under the EPAs. It is proposed that the EU phases out PSRs and only applies such rules to a limited range of products (Humphrey, 2022).

4. **Re-engineer EPAs in light of the AfCFTA.** Numerous studies have documented the challenges that arise when exporters must comply with differing RoO under various FTAs. This may act as a deterrence in utilising preferential tariffs, especially if compliance costs exceed any benefits. Hence, to simplify trade with and within Africa, the EU should seek to align the RoO under its EPAs with those of the AfCFTA to the extent possible provided that the AfCFTA adopts simple RoO for the remaining sectors under negotiation.
5. **Maintain engagement with the private sector, especially manufacturers and exporters.** As manufacturers and exporters bear the burden of RoO, it is important for them to be included in the discussions surrounding reforms to RoO. The EU could engage in consultations with exporting firms and manufacturers to gain their insights on the current RoO and identify areas where improvements are required.
6. **Industrial policy designs to be aligned to the trade agreements in Africa.** It is important for African countries to design their industrial policies in relation to the trade agreements they are party to and prioritise sectors in which they can generate value addition. For example, a regional leather industrial strategy across different stages of the value chain would facilitate meeting the rules. Moreover, in the same light, national and regional strategies should aim to develop forward and backward linkages.
7. **Aid for Trade to be used for more vertical integration, easing bilateral trade (for cumulation) and adding value to meet RoO.** Allocating Aid for Trade resources towards promoting vertical integration, easing bilateral trade for cumulation, and creating value addition is essential. Aid for Trade can also be used to develop the capacity of exporters and manufacturers in understanding the requirements of RoO.

1. Background

1.1. Introduction

Rules of origin (RoO) are laws, regulations, and procedures used to determine the national source of an imported product in the context of international trade. RoO can be distinguished between non-Preferential Rules of Origin (NPRoO) and preferential Rules of Origin (PRoO). NPRoO are used to determine the country of origin of goods for the application of the most-favoured-nation treatment (MFN) and the implementation of a few commercial policy measures such as anti-dumping and countervailing duties, trade embargoes, and safeguard measures. NPRoO are at the discretion of the World Trade Organisation Members so long as they satisfy Members' obligations of transparency and non-discrimination of the WTO.

Preferential Rules of Origin are used to determine the conditions of eligibility for preferential treatment under trade agreements. Thus, PRoO operates outside the scope of the WTO. PRoO are used in preferential trade agreements to prevent countries that are not party to the agreement from exploiting trade agreements by providing inputs or transshipping products through partner countries and claiming preferential treatment. RoO thus help prevent trade deflection and protect domestic industries from unfair competition by ensuring that only goods that meet the specific origin requirements are eligible to receive preferential treatment. Preferential Rules of Origin (PRoO) are necessary for all Preferential Trade Agreements (PTAs), reciprocal like Free Trade Areas (FTAs) and for non-reciprocal schemes like the Generalised System of Preferences (GSP) or Everything but Arms (EBA).

However, RoO are often complex. Thus they can represent a significant barrier to trade, especially for developing countries. RoO give rise to several challenges and costs due to their complexity, including the costs of compliance, a lack of transparency, and/or difficulties in meeting the rules. This can deter countries from participating in global and regional value chains and accessing new markets. RoO also affect sourcing decisions and the viability of regional value chains. Furthermore, the proliferation of free trade agreements with distinct RoO has complicated the functioning of the international trading system. By increasing the cost of trade, PRoO reduce the benefits of trade liberalisation for PTA members.

Several studies have been conducted on the impact of RoO on trade and access to markets. A recent study commissioned by GIZ, by Humphrey (2022) analyses the development impact of rules of origin. It compares rules of origin under different trade arrangements, such as the GSPs of Canada and Japan as well AGOA. It also compares the rules of origin under regional trade agreements in Africa. The study recommends allowing diagonal cumulation between all African countries and the EU and limiting product-specific rules of origin (Humphrey, 2022).

With a view to simplifying and harmonising NPRoO, negotiations have been ongoing since the creation of the WTO. Yet, so far, WTO members have struggled to make substantive progress.² Little progress has taken place in negotiations for the simplification and harmonisation of NPRoO. To note recent developments, for African countries (and LDCs in general), the subject of this paper, the WTO LDC group submitted a paper in October 2020 to the WTO Committee on RoO noting that developed countries granting non-reciprocal market access had made little progress since the resolutions taken at the WTO 2015 Nairobi ministerial.³ Against this backdrop showing difficulties in making progress on simplifying NPRoO, this report deals with PProO (henceforth abbreviated to RoO) practised by the EU in their PTAs in general, but particularly with African countries. By describing in detail, the large number of RoO, this report shows how their complexity can reduce the uptake of intended preferences.

The report takes Madagascar and Rwanda, two LDCs, as case studies for additional evidence. Both countries have strong trade ties with the EU. As LDCs, both countries have access to the EBA which gives them zero-tariff access to the EU on a non-reciprocal basis. Madagascar also benefits from preferential market access under the European Union- Eastern and Southern Africa Economic Partnership Agreement (EU-ESA EPA). These arrangements have specific RoO requirements that exporters must navigate, making them relevant case studies for understanding the practical implications and challenges of RoO compliance. Moreover, Rwanda and Madagascar have different economic and industrial profiles, thereby providing valuable insights into the diverse impacts of RoO. Rwanda, with its smaller economy and comparatively limited industrial base, can showcase the challenges encountered by countries with less developed industries when it comes to meeting RoO requirements. Madagascar, with its larger and more diversified economy, can provide insights into the experiences of countries with a greater range of products and industries affected by RoO. Hence, analysing the experiences of these two countries enables a nuanced understanding of the impact of RoO on different types of economies and industries.

While RoO are necessary for all PTAs to prevent trade deflection⁴, for developing countries, especially the low-income countries of Africa, RoO are also instruments to achieve other objectives:

- To develop through privileged access to an enlarged market area that remains protected from and relatively isolated from the rest-of-the-world.

² Inama (2022) devotes 1300 pages to describe and analyse RoO around the world. Hoekman and Inama (2018) give a detailed account of the state of negotiations, noting the Uruguay Round Agreement on Rules of Origin (ARO). The ARO requires that NPRO be applied in a non-discriminatory, transparent manner and not be designed as a barrier to trade. So far, the ARO objective to adopt a single set of NPRO across products which was supposed to be completed by 1998 is still in progress. Hoekman and Inama (2018) document some convergence in PSRO at the 6-digit level in several FTA.

³ See Humphrey p.34.

⁴ That is for imports to enter via the member with the lowest MFN tariff to then be re-exported within the area to members with higher MFN tariffs. Assuring that non-members do not benefit from market access privileges intended only for members can be thought of as the authentication function of ROO.

- To enable countries to raise their competitiveness so that they may take advantage of their preferential access to the EU market under non-reciprocal.
- To develop entire supply chains within the members of any preferential market access instrument.⁵

These objectives are hard to implement. Both objectives are hard to implement efficiently, and they are hard to reconcile: if RoO are too strict, the necessary imports for domestic production and exports will be cut off. If too lenient, domestic producers will not be protected from foreign competition. The objectives are also difficult to reconcile because strict RoO in the EU will raise the compliance costs of African exporters, and become difficult to meet, curtailing the benefits of preferential access. Moreover, in supply chains, regional and non-regional, stiff origin requirements are an obstacle to the imports of intermediates (over half of world trade is in intermediate goods) necessary for strong export growth, at least up to the present.

Recognising that RoO vary greatly across PTAs, this report has two objectives: (i) to discuss the likely effects (and to the extent possible, analyse the consequences) of EU RoO on EU-Africa trade; and (ii) to come up with recommendations and improvements in their design.

This report is organised into 7 Chapters. Chapter 2 covers the context of African trade with the EU, including the tariffs applied and applicable RoO. Chapter 3 provides an analysis of preference utilisation rates in EU-African trade. Chapter 4 reviews the evidence of the effects of RoO on trade volume, diversification, and the development of regional value chains. Chapter 5 addresses the challenges that African exporters experience concerning RoO. Chapter 6 presents the summarised assessment of the significance of EU RoO for African producers when exporting to the EU as well as lessons learnt that can be applied in the context of the AfCFTA. Finally, Chapter 7 provides recommendations on how to address challenges identified by the study through changes in the design of RoO.

1.2. Motivation for the Study

The main objective of this assignment is to prepare a study on the role of RoO in EU-Africa trade relations. The study answers to the extent possible, given the evidence collected and based on limited consultations with traders, the following overarching questions:

- **Impact on trade:** What is the evidence that the current EU RoO affect African exporters and their market access to the EU under EBA, GSP or EPAs? Do country characteristics such as the size or diversification of the economy affect the impact of RoO on trade?

⁵ Because transport costs across countries in Africa are mostly higher than the difference in MFN rates across members, in practice, the development goal is far more important than preventing trade deflection. More on this below.

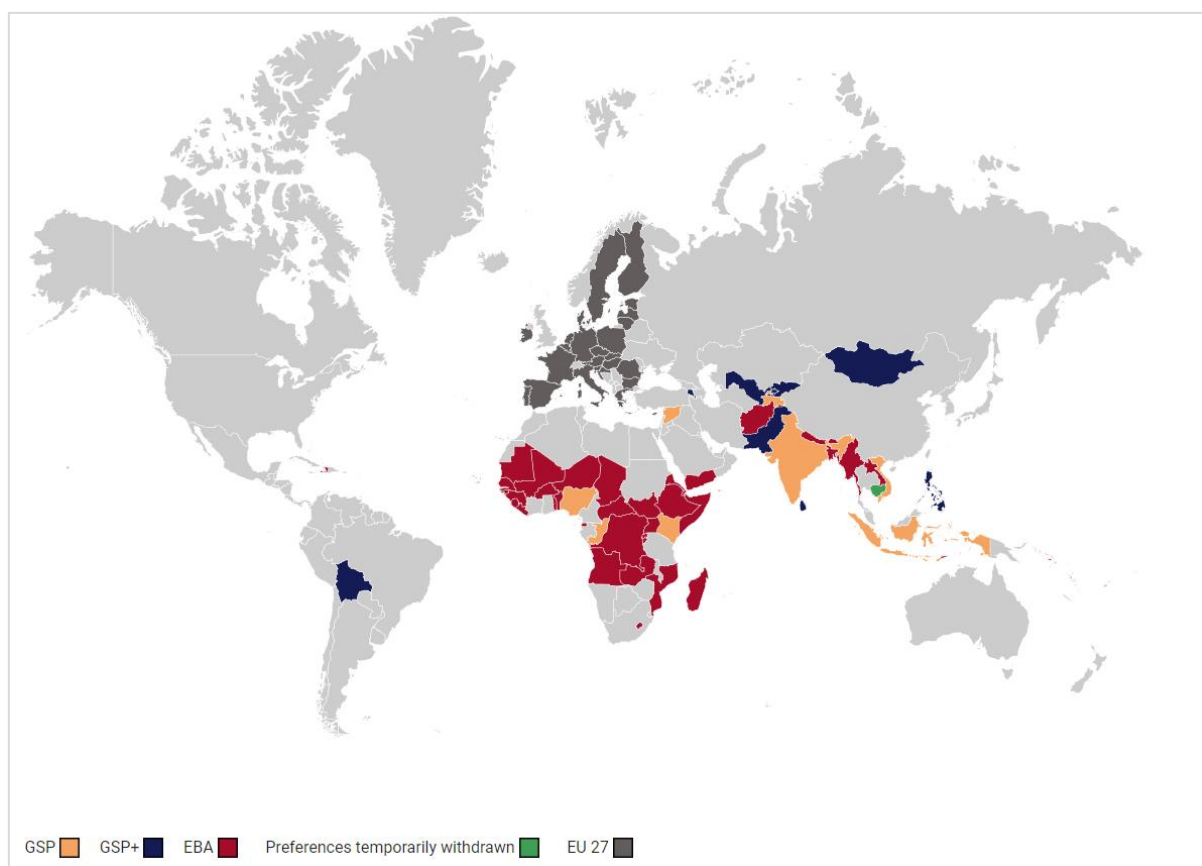
- **Export growth and diversification:** What is the evidence that the current EU RoO promote or hinder export growth and diversification? Is there any evidence that RoO encourage domestic value addition or is the domestic value addition required by the RoO a challenge?
- **Administrative requirements:** Are the administrative requirements of RoO a barrier for exporters, and if yes, to which kind of exporters? What are the advantages and disadvantages of different systems?
- **Recommendations:** How could those challenges identified by the study be addressed through changes in the design of RoO? Are there any lessons learned for the AfCFTA or RECs?

2. EU RoO in preferential arrangements with Africa

2.1. EU RoO under the GSP Schemes

Currently, African countries can export to the EU under three major preferential systems namely the GSP, the EPAs and the association Agreements.⁶ The EU Generalised Scheme of Preferences (GSP) was conceived following recommendations by UNCTAD calling for developed countries to assist developing countries in integrating the world economy and alleviating global poverty (UNCTAD, 2002). GSP schemes have been adopted by around a dozen industrialised economies, including the United States, Canada, and Japan, among others. As these schemes are unilateral in nature and countries also need to balance domestic political and economic objectives, the preferences granted under the GSP are decided solely by the offering party. Countries benefiting from the EU's GSP in 2023 are given in Figure 1.

Figure 1. EU's GSP Beneficiary Countries



Note: Armenia has graduated from GSP. Source: EU GSP Hub (2023). Accessed on 1 March 2023.

⁶ While the EU has signed numerous bilateral trade agreements with countries and regions, the name of those agreements might differ. Economic Partnership Agreements (EPAs) specifically refer to trade and development agreements negotiated between the EU and African, Caribbean and Pacific (ACP) countries.

The EU's GSP is structured around three core arrangements namely the Standard GSP, GSP+ and the Everything But Arms (EBA) schemes. The Standard GSP applies to low and lower-middle-income countries and includes a partial or complete liberalisation of tariffs on approximately two-thirds of tariff lines (European Commission, n.d.). GSP+, on the other hand, phases out the tariff reductions applicable under the Standard GSP for low and lower-middle-income countries that implement 27 international conventions related to human and labour rights, environmental and climate protection, and good governance (European Commission, n.d.). Finally, the EBA targets least developed countries (LDCs), offering them duty-free and quota-free market access to the EU on all products except for arms and ammunition. To qualify for one of these GSP schemes, beneficiary countries must meet the conditions summarised in Table 1.

Table 1. Eligibility criteria for the EU GSP schemes

	Standard GSP	GSP+	EBA
Beneficiaries	• Low or lower-middle-income countries (as classified by the World Bank) • no other trade agreement with the EU is in place	• Vulnerable developing countries, with limited export diversification and a low share of total imports from all GSP beneficiary countries	• Least Developed Countries (as classified by the UN)
Specific obligations	• None*	• Ratification of 27 international conventions with a commitment to active participation in the EU's monitoring dialogue	• None*

*Note: While EBA beneficiary countries must not necessarily ratify the international conventions required for GSP+ beneficiaries, they are obliged by Article 19 of the GSP Regulation to adhere to the principles of those conventions. Source: (European Commission, 2021)

The applicable RoO within the framework of the EU's GSP can be divided into the general rules, which apply to all GSP Beneficiaries, and the Product Specific Rules (PSR), which differentiate between EBA Beneficiaries and GSP/GSP+ Beneficiaries. Some of the general rules include the fact that to qualify for originating status, products must either be classified as 'wholly obtained' (WO)⁷ or 'sufficiently worked or processed from imported materials'. Goods produced from imported materials need to meet the product-specific criteria specified in the Commission Delegated Regulation (EU) 2015/2446. A minimum local value-added of 50% is required for GSP and GSP+ beneficiaries for most industrial products. For textile and clothing, products are required to undergo a double transformation and have at least 30% local value-added. RoO for EBA beneficiaries is considered more facilitating, as these either allow for a higher percentage of non-

⁷ Products are considered as wholly obtained "by virtue of their nature and absence of imported inputs in the final composition of these products (i.e., plants, vegetables, minerals, fish and the like)" (UNCTAD, 2022).

originating materials or simpler product-specific rules (i.e., single instead of double transformation for textile and apparel).

Product-specific rules give LDCs a margin over developing beneficiary countries under the EU's GSP regimes. While the RoO under the Commission Delegated Regulation (EU) 2015/2446 (as amended) apply across all GSP beneficiaries, EBA beneficiary countries have less stringent rules. More trade-facilitating product-specific rules (PSRs) are provided for certain products of the chemical or allied industries, plastics, textiles and garments, ceramic products, machinery and electrical equipment, vehicles and transport equipment, and optical instruments.

Table 2. RoO main differences under EU GSP schemes

Product HS code	RoO for LDCs	RoO for other GSP beneficiaries
Chemicals and allied industries (HS 28, 29, 31, 32, 33, 35, 36, 37, 38) Plastics (HS 39) Ceramic products (HS 69)	CTH/ CTSN with value-limit or specific processing or Non-originating materials do not exceed 70% of the ex-works price	CTH/ CTSN with value-limit or specific processing or Non-originating materials do not exceed 50% of the ex-works price
Textiles (HS 50, 51, 52, 53, 54, 55, 56, 58, 59)	Single transformation (Weaving) or specific processing with a value limit of materials not exceeding 47.5%	Double transformation or specific processing with a value limit of materials not exceeding 47.5%
Garment (HS 61, 62, 63)	Single transformation (Manufacture from fabric)	Double transformation or specific processing with a value limit of materials not exceeding a specific threshold
Machinery and electrical equipment (HS 84, 85) Vehicles and transport equipment (HS 87) Optical instruments (HS 90)	CTH or Non-originating materials do not exceed 70% of the ex-works price	CTH or Non-originating materials do not exceed 50% of the ex-works price

Source: Author compilation. See the list of abbreviations for the definition of different RoO

The current GSP Regulations are expected to expire by the end of 2023 and new rules will apply from January 2024 for 10 years.⁸ While the EU will maintain the principal features of the current arrangement, it is expected that the regulations will be further strengthened, especially when it comes to the respect for human rights, the protection of the environment and the better monitoring of the scheme (European Commission, n.d.). Some of the proposals made so far by the European Commission include improving accessibility to the GSP+ arrangement for LDCs graduating from the EBA and introducing new processes so that the RoO aligns with the development, financing, and trade needs of countries (European Council, 2022).

2.2 The EU EPAs with African countries

Under the framework of the Cotonou Agreement, African, Caribbean, and Pacific countries entered into negotiations with the EU for Economic Partnership Agreements. The primary objective of the Cotonou Agreement was to advance development in African, Caribbean, and Pacific (ACP) countries and enable them to better integrate the global economy (European Council, 2022). The EPAs, therefore, have a strong foundation in sustainable development, development cooperation and human rights (European Commission, n.d.). As of January 2023, the EU is a Party to seven EPAs, regrouping thirty-two out of seventy-nine ACP countries. Out of these, 14 African countries have an EPA or provisional EPA in force (European Commission, n.d.).⁹

Unlike the GSP arrangements, the EPAs are reciprocal. However, they remain asymmetric in favour of the ACP countries. The EU opens its market fully and immediately, while ACP countries have up to 15 years before they open their markets (European Commission, n.d.). Moreover, ACP countries can also exclude sensitive sectors from the list of products being liberalised under the EPAs. The EPAs also include provisions on special safeguards measures that protect infant industries or protect the domestic economy from import surges, among others.

Moreover, the EPAs also include provisions aimed at simplifying and making RoO more flexible. For instance, in the EU-ESA EPA, Article 41 of the Agreement stipulates the setting up of a Customs Cooperation Committee. Among its responsibilities, the Committee must regularly examine the impact of RoO to identify corrective measures. In the EU-Cote d'Ivoire EPA, a similar committee has been set up with the task of assisting in the monitoring and implementation of RoO (European Commission, 2009). A more comprehensive description overview of the RoO applicable under EPAs is presented in Annex I.

⁸It is worth noting that RoO are regulated in a separate EU regulation that are not directly impacted by the current GSP reform process.

⁹ The African countries with an EPA with the EU include Eastern and Southern African countries (Comoros, Madagascar, Mauritius, the Seychelles, Zambia, and Zimbabwe); SADC countries (Botswana, Lesotho, Mozambique, Namibia, South Africa and Eswatini); and two West African countries namely Côte d'Ivoire and Ghana.

Box 1 Cumulation under the EBA and EPA

Cumulation allows producers to use inputs from specified eligible countries and qualify for originating status. Under the EU EBA, beneficiary parties from a regional grouping can use inputs from each other and qualify for originating status. Under the current rules, the following regional groups are recognised:

- Group I: the Association of South-East Asian Nations (ASEAN)
- Group II: the Andean Community, Central American Common Market and Panama
- Group III: the South Asian Association for Regional Cooperation (SAARC)
- Group IV: Mercado Común del Sur (Mercosur)

Hence, under the EBA, as well as under the other GSP arrangements, African countries cannot cumulate with each other.

In contrast, under the EU-ESA EPA, products can be considered as originating if cumulation is undertaken with the EU, another ESA State, ACP States, or Overseas Countries and Territories (OCTs). Moreover, subject to certain conditions, cumulation can also be undertaken with other neighbouring countries that are not ACP states. This, however, requires the setting up of adequate administrative cooperation procedures among the ESA States, the EU, and the neighbouring developing countries. (See Box 7 in the Annex I for more details).

Sources: UNCTAD (2022) and European Commission (2012)

2.3 Administrative requirements of EU RoO

Trade under the different preferential market access terms with the EU is subject to numerous administrative requirements, including those related to RoO. While compliance with administrative requirements can be daunting for exporters, RoO serve an important role, especially in determining whether traded products are subject to MFN treatment or qualify for preferential treatment. Thus, the administrative requirements of RoO ensure that preferential agreements are implemented properly and this in turn spurs further trade and development (WCO, 2012).

Under the GSP schemes, two main administrative requirements apply. The territorial requirement and non-manipulation principle and the documentary evidence have to be submitted. With regard to the former requirement, to qualify for originating status, goods need to be shipped directly to EU countries and in the event that goods need to undergo transit through other countries, they must remain under the supervision of customs authorities to ensure that the goods undergoing transit were not subject to any form of processing in the transiting country (UNCTAD, 2022).

Prior to this, the non-manipulation rules were much more complex with documentary evidence required to ascertain that the goods did not undergo any transformation. This posed considerable problems for the landlocked African countries, including Rwanda. Now, compliance to the non-alteration rule is considered to be met by countries by default unless customs authorities have doubts that the principle of non-alteration was not respected. In case of such doubts, customs authorities may require the exporter to provide documentary evidence of non-alteration. This may include transport documents such as bills of lading or other evidence such as the numbering or marking of packages (UNCTAD, 2022).

When exporting goods to the EU, GSP beneficiaries are also required to send certain documentary evidence. Exporters need to register themselves on a database, the Registered Exporter System (UNCTAD, 2022). The REX replaces the certificates of origin ‘Form A’ that was previously used by exporters. Once the registration is completed on the database, the trader is known as a ‘registered exporter’. Statements of origin are electronically transmitted. In the context of the GSP, the REX has been initiated since January 2017, although many countries have been granted a transition period to complete the shift.

Once registered, exporters must send a statement of origin to their customers concerning their exports. The statement of origin can either be in English, French, or Spanish. The statement is valid for 12 months (UNCTAD, 2022) The statement of origin can also be sent after exports have occurred (retrospective statement), although the statement must be presented in the Member State of declaration for release for free circulation within two years following export. It is also important for Members to indicate whether cumulation has taken place in their statement of origin, for example, if cumulation took place with the EU, it must indicate “European Union cumulation”.

In contrast to the previous system, the introduction of REX has produced many advantages. It simplifies the process of verifying RoO compliance and reduces administrative burdens and paperwork on exporters. Thus, it lowers the costs of exports, making it easier for exporters to comply with RoO. Moreover, through self-certification, exporters can self-certify the origin of their goods without the need for approval from authorised bodies, resulting in faster processing times and greater flexibility for exporters. Moreover, obtaining certificates of origin (COO) from authorities for exports was equally a costly procedure that was particularly unfavourable for micro, small and medium-sized enterprises (MSMEs).

Nonetheless, the REX system also has certain disadvantages. Whilst REX simplifies the process for exporters, the latter are nonetheless required to comply with numerous requirements, including maintaining records, ensuring that all information provided is accurate, and potentially undergoing verifications or audits. Thus, REX does not eliminate all compliance costs. Given that REX relies on self-certification, it increases the risk of non-compliance and fraud on the part of exporters. It also increases the risk of errors on the part of exporters who may then face high penalties.

Regarding the EPAs, in order to demonstrate origin, exporters need to submit certain documentary evidence as well. For instance, in the case of the EPAs, all exporters claiming preferential status must submit a ‘Movement Certificate EUR.’ that is issued by the customs authorities in their home countries (European Commission, 2020). Or alternatively, they can submit an invoice declaration (self-declaration). The invoice declaration concerns consignments that are valued at EUR 6000 or less, or for exporters who are already approved by customs authorities as meeting the required originating status.^{10 11} The proof of origin is valid for a period of 10 months (European Commission, 2020). Customs authorities can also verify whether goods meet the originating requirements and inform the authorities from the importer country, accordingly.

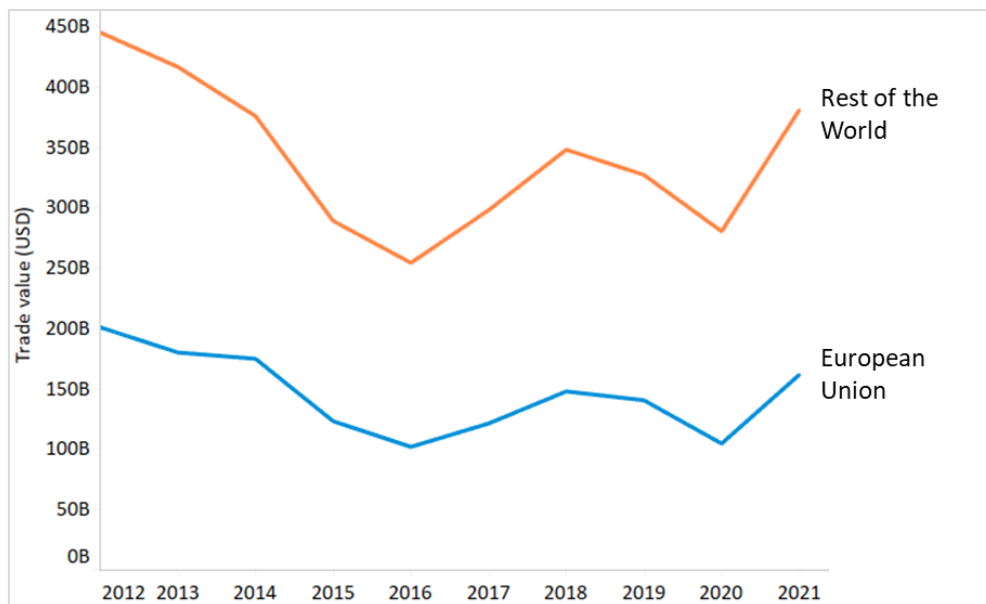
¹⁰ In the case of the EU-SADC EPA, certain exporters benefit from the fact that they do not require to demonstrate proof of origin. This is, however, applicable only on products where the total value does not exceed EUR 500 or where the value does not exceed EUR 1200 when the products are entering the EU through a traveller’s personal luggage.

¹¹ Approved exporters are given authorisation by the customs authorities of the exporting country when the exporters are engaged in regular shipments of products to the EU. Approved exporters can self-declare irrespective of the value of their consignments.

3. EU-African Trade and Utilisation of Preferences

Africa and the EU have a longstanding trading relationship, with the EU being Africa's largest trading partner. In 2021, African exports to the EU exceeded USD 170.4 billion, representing 28.8% of the continent's overall exports. The largest markets for African exports in the EU include Spain, France, and Germany where exports in 2021 amounted to USD 30.4 billion, USD 27.5 billion, and USD 25.5 billion, respectively. However, over the past decade, African exports to the EU and the rest of the world alike declined. Exports to the rest of the world fell from USD 445 billion in 2012 to USD 381 billion in 2021 while exports to the EU dropped from USD 201 billion in 2012 to USD 162 billion in 2021 (Figure 2). Based on the past decade, the trend indicates that African countries will continue to export more to countries outside of the EU.

Figure 2 Africa's exports to the EU and the rest of the world in the last 10 years



Note: The rest of the world excludes the EU. The rest of the world includes intra-Africa trade; the EU accounted for 28.8% of Africa's exports in 2021.

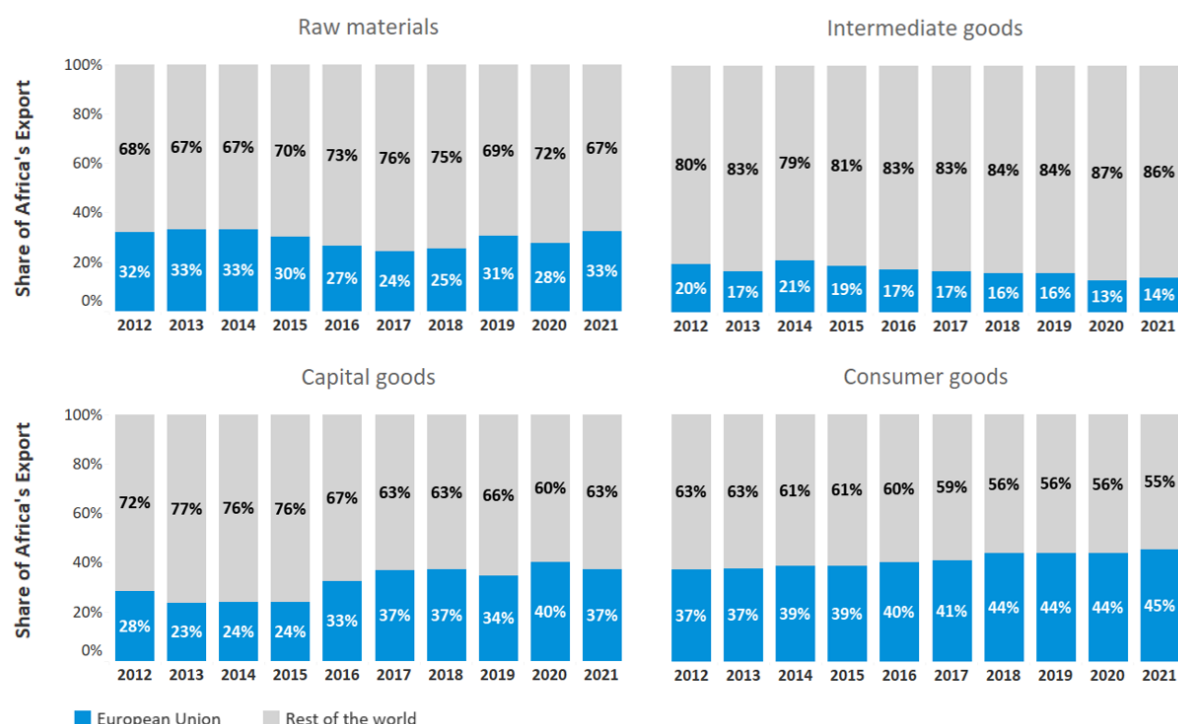
Source: IEC Calculations based on ITC TradeMap (2023)

Africa's primary export to the rest of the world is raw materials, despite the export of intermediate goods equally witnessing a considerable rise. In 2021, the continent exported USD 155 billion of raw materials to the rest of the world, accounting for 67% of total exports. On the other and, the export of intermediate goods nearly doubled, rising from USD 77 billion in 2012 to USD 143 billion in 2021. Thus, Africa's exports of raw materials witnessed a decline of 9% in favour of increasing intermediate goods export by 6%, between 2012 and 2021. This would indicate rising participation in different segments of global value chains.

The composition of African exports to the EU has undergone some transformation over the past decade. In 2021, African countries exported 33% of their raw materials to the EU. However, raw

material exports have fallen dramatically in the last decade, from USD 122 billion in 2012 to USD 75 billion in 2021. On the other hand, the Continent's exports of consumer goods to the EU reached USD 52 billion while intermediate goods reached USD 23 billion, and capital goods reached USD 11 billion in 2021. Nonetheless, only 14% of all African imports into the EU were intermediate goods. From 2012 to 2021, the share of consumer goods exports to the EU increased by 8% (Figure 3).

Figure 3. Share of Africa's exports to the EU and RoW, by product category, 2012-2021

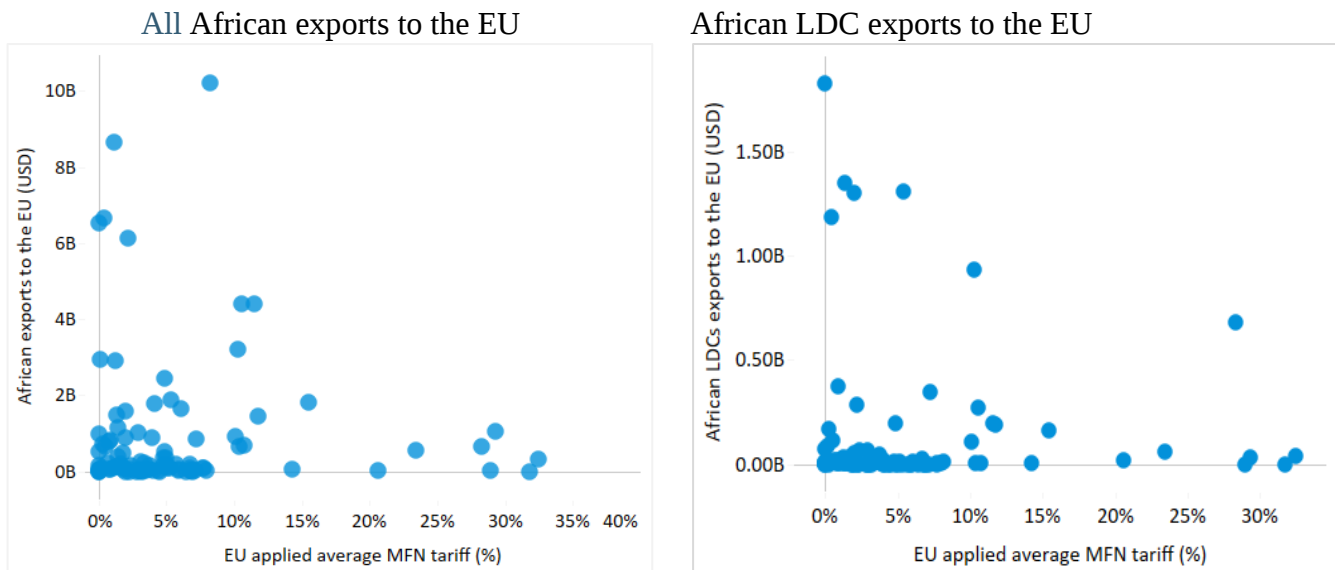


Source: IEC Calculations based on UNCTAD SoP database and ITC TradeMap. Accessed in February 2023

When observing trade with the EU, against the MFN tariffs applied by the EU for those same products, there appears to be no obvious relationship between the share of exports going to the EU and the EU's average MFN-applied tariff rates. This is a remarkable observation given the emphasis on promoting more openness to LDCs through the GSP schemes. In other words, the great majority of the trade from African countries, including LDCs, is occurring in product groups which have low or nil MFN rates (seen in the surge of points on the left of the charts in

Figure 4).

Figure 4. African exports to the EU against the EU's average applied MFN tariff (2021)

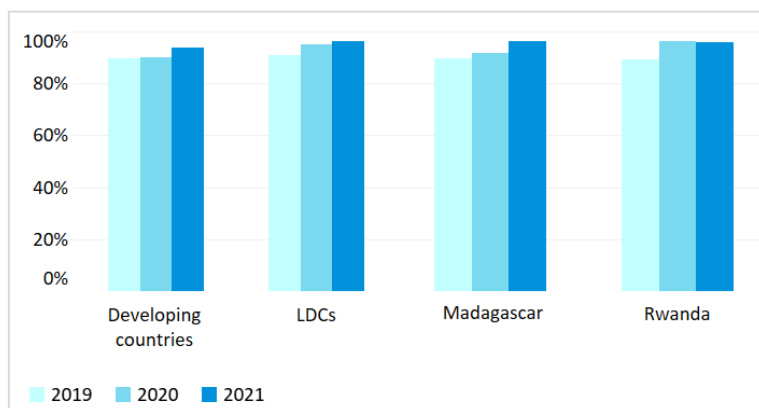


Note: The dots are showing the values for products at the HS2 level in 2021.

Source: Authors' calculations. WTO stats, ITC trade map. Accessed in February 2023

The preferential utilisation rates¹² (PUR) of African LDCs when exporting to the EU are heterogenous across sectors. From 2019 to 2021, African developing countries and LDCs, including Madagascar, and Rwanda have all increased their PUR with the EU. Madagascar and Rwanda increased their utilisation rate by 6%, outpacing African developing countries, which increased their utilisation rate by 4% (Figure 5).

Figure 5. African countries' PUR trend from 2019 to 2021

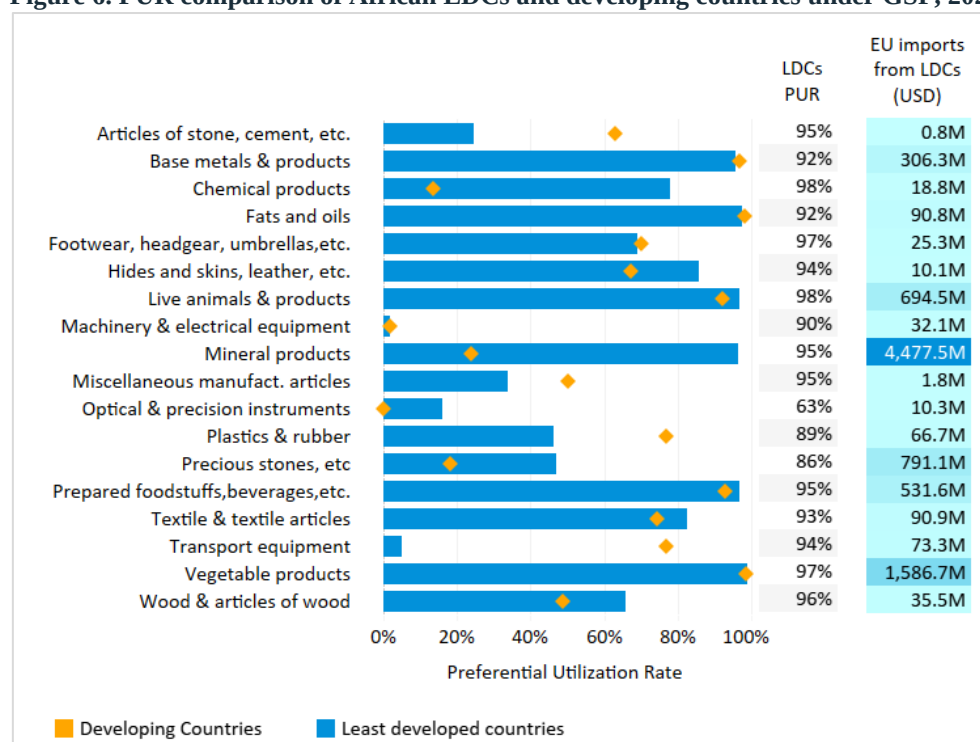


Source: Author calculations based on UNCTAD GSP utilisation database accessed in February 2023

¹² Preference utilisation rates (PUR) refer to “the share of imports using the preferences in a trade agreement, out of total imports for which the MFN tariff is not zero.” “It indicates the extent to which firms [or countries] are utilising the reduced-tariff benefits provided by [a] trade agreement.” (Tamberi & Koecklin, 2022)

In comparing the PUR between African LDCs and developing countries, it is found that LDCs have a greater PUR in certain products. Products from the mineral sector are the EU's largest imports from African LDCs, amounting to USD 4.5 billion in 2021. Concerning this sector, LDCs have a PUR of 96%. In contrast, developing countries have a significantly lower PUR of 24%. Likewise, when it comes to precious stones, the EU's third most imported products from African LDCs, the PUR is 47 % while that from developing countries averages 18%. According to data from Eurostat, Comoros, Lesotho, and Madagascar were able to reach higher utilisation in Animal products; Prepared foodstuffs; Plastics and rubber; Wood products; Textile and Apparel; and Footwear. Meanwhile, lower utilisation rates were seen in the Chemical products; Pearl; and Machinery sectors. This highlights the sectors where African countries have developed their capacities to meet the RoO for exports as well as showcases those sectors where constraints are faced in meeting RoO requirements.

Figure 6. PUR comparison of African LDCs and developing countries under GSP, 2021



Note: This comparison does not consider countries that have an FTA with the EU.

Source: Author calculations based on UNCTAD GSP utilisation database accessed in February 2023

Madagascar

Madagascar benefits from preferential market access to the EU through the EBA as well as through the ESA EPA. A significant proportion of Malagasy exports, around 78%, are eligible under the EBA. However, Madagascar has a very low PUR under the EBA, amounting to 0.6% in 2021, which is explained by the fact that it must use the EPA after a transition phase. The peak use of EBA preferences over the past decade was in 2014 when the PUR was estimated at 3.99%. This is in high

contrast to the EU-ESA EPA under which Madagascar has a high PUR of above 90%. The products for which the EBA is utilised include apparel and clothing, spices, fish and crustaceans, and to a much smaller extent, prepared foodstuff. The case of Madagascar and the discrepancy between the PURs of the EBA and the EPA underscore the importance of provisions of cumulation in many sectors, including textile and apparel. Madagascar can cumulate with other EPA-ESA countries and source inputs that still qualify for preferential RoO.

Madagascar has several important industries, including chemical products, machinery & mechanical appliances, and textile products. These industries play a key role in the country's economy and constitute an important source of export revenue. Madagascar's largest export to the EU is vegetable products which have a PUR of 95%. It records a slightly lower PUR than other developing countries, however, for which the average PUR is 97%. This is followed by the exports of textiles and textile articles. Textile products represent Madagascar's second-largest export to the world, generating USD 487 million in exports in 2021. This underscores the importance of the textile industry to the country's economy. With an average MFN margin of 7.7% to the EU, Madagascar utilises 96% of its preferential tariff with the EU for textile products, indicating a relatively high utilisation rate. Madagascar outperforms other developing countries with regard to the use of preferences in the sector.

Other sectors that record high PURs include prepared foodstuff, live animals and products, and mineral products, among others. Animal products have a high average MFN margin of 13%. Madagascar has effectively capitalised on preferential tariffs under the EPA for these products, with a high utilisation rate of 99.%. Similarly, prepared foods also have a very high average MFN margin of 17.4% and Madagascar has effectively tapped into the potential offered by this sector in the EU market by fully utilising the EU preferential tariff. Madagascar has a high PUR of 99.8% for prepared foodstuffs.

Table 3. Madagascar's Utilisation Rates of Preferential Schemes with the EU (2021)

Product Description	Exports (USD Thousands)					PUR (%)		
	Total	Dutiable	EPA	GSP	Total Use of Preferences	EBA	EPA	Total
Live animals & products	106,196	104,979	99,498	5,326	104,824	5.1	94.8	99.9
Vegetable products	371,662	302,638	269,357	18,277	287,634	6.0	89.0	95.0
Fats and oils	492	424	388	0	388	0.0	91.7	91.7
Prepared foodstuffs, beverages, etc.	87,505	65,223	64,658	445	65,104	0.7	99.1	99.8
Mineral products	15,275	287	284	0	284	0.0	98.9	98.9
Chemical products	22,470	3,834	3,223	1	3,225	0.0	84.1	84.1
Plastics & rubber	3,409	3,408	3,322	1	3,322	0.0	97.5	97.5
Hides and skins, leather, etc.	8,528	8,528	7,977	7	7,984	0.1	93.5	93.6
Wood & articles of wood	17,911	16,490	15,184	775	15,959	4.7	92.1	96.8
Pulp of wood, paper, books, etc.	1,433	0	0	0	0			

Product Description	Exports (USD Thousands)					PUR (%)		
	Total	Dutiable	EPA	GSP	Total Use of Preferences	EBA	EPA	Total
Textile & textile articles	275,814	273,456	253,235	9,257	26,2491	3.4	92.6	96.0
Footwear, headgear, umbrellas, etc.	2,637	2,075	1,857	140	1,997	6.8	89.5	96.2
Articles of stone, cement, etc.	207	107	92	0	92	0.0	85.5	85.5
Precious stones, etc	15,842	2,200	1,121	758	1,879	34.5	51.0	85.4
Base metals & products	28,117	429	318	1	318	0.2	74.1	74.3
Machinery & electrical equipment	2,725	1,872	1,674	0	1,674	0.0	89.4	89.4
Transport equipment	711	237	13	0	13	0.0	5.6	5.6
Optical & precision instruments	8,967	5,206	5,028	0	5,028	0.0	96.6	96.6
Miscellaneous manufact. articles	7,037	6,532	5,034	1,327	6,360	20.3	77.1	97.4

Source: Author Calculations based on UNCTAD GSP utilisation database

At the regional level, Madagascar has shown significant growth in diverse other sectors where it could potentially also increase exports to the EU. Madagascar demonstrates a high Compound Annual Growth Rate (CAGR) of 20.1% in chemical product exports to the Eastern African region, showcasing the increasing demand and competitiveness of these products in the region. However, under the EPA, there is still some progress to be achieved in exporting to the EU, as Madagascar only uses 84% of its preferential tariffs in this regard. Some other sectors where Madagascar records a gap in contrast to other developing countries include transport equipment where Madagascar has a very low PUR of 5.6%. However, exports in this sector make up for a very small volume of exports at USD 0.7 million. Overall, these findings suggest that Madagascar has diverse and promising industries with competitive advantages.

Madagascar records high use of preferences with the majority of the GSP donors. In 2018, PUR with the US, Japan and the EU were all above 90%. The only exception is Canada with which it recorded a PUR of 58.7%. As far as the US is concerned, the use of preferential agreements is mostly with regard to AGOA which has a PUR of 92% while the US GSP has a PUR of 57.2% which comes to 92.8% for all preferences. Thus, overall, it can be said that Malagasy exporters can meet the RoO of various exporters and that the easier RoO under the Canada GSP does not necessarily translate to more trade with Canada, something which can be explained by other factors such as market size, distance, and logistic routes.

Table 4. Madagascar: Overall Utilisation Rates of Preferential Schemes (2018)

Country/ Region	Scheme	Exports (USD thousands)				Coverage (%)	Utilisation Rates (%)
		Total	Dutiable	Covered	Received		
Canada	GSP	101,553	9,427	9,427	5,530	100	58.7
EU	GSP	1,465,425	1,147,388	1,147,388	24,073	100	2.1
	ESA-EU EPA				1,028,448	100	89.6
	All Pref.				1,052,521	100	91.7
Japan	GSP	243,439	177,164	177,164	171,912	99.9	97.1
US	AGOA	907,027	216,438	213,714	196,542	98.7	92
	GSP			7,695	4,399	3.6	57.2
	All Pref.			213,714	200,941	98.7	92.8
TOTAL		2,717,444	1,550,417	1,547,550	1 430,904	99.8	92.5

Source: UNCTAD & COMESA (2023)

Rwanda

As an LDC, Rwanda benefits from preferential market access to the EU through the EBA scheme. In 2021, Rwanda's exports to the EU were worth around EUR 69 million and were predominantly comprised of vegetable products, followed by mineral products. In 2021, Rwanda had a preference utilisation rate of 97.2%, highlighting that the country makes significant use of the preferential terms of the EBA. Throughout the years, Rwanda's preference utilisation under the EBA has shown significant improvement starting at 4.85% in 2012 to reach its current level. Moreover, the share of eligible exports has also risen, increasing from EUR 6.8 million in 2012 to reach EUR 13.2 million in 2020. Nonetheless, eligible exports only account for a small share of Rwanda's overall exports to the EU (GSP Hub, 2022).

Rwanda's exports under the EBA are largely concentrated in the agricultural sector, with the EU importing nearly EUR 51.7 million worth of vegetable products from Rwanda. For vegetable products, Rwanda has a near-perfect PUR of 99.4%. As indicated in the previous sections, meeting the origin requirements within such sectors remains easy due to the simplicity of the WO rules. Rwanda equally has high PURs in sectors such as chemical products (96.6%) and textile and apparel (92.6%). In sectors where Rwanda faces a high MFN, it makes use of tariff preferences.

Table 5. Rwanda's Utilisation Rates of Preferential Schemes with the EU (2021)

Product Description	Exports (USD Thousands)			PUR (%)
	Total	Dutiable	GSP	
Live animals & products	0.44	0.23	0	0
Vegetable products	51658.27	144,58.09	143,71.69	99.4
Fats and oils	107.74	107.74	75.43	70.0
Prepared foodstuffs, beverages, etc.	20.00	17.64	10.03	56.8
Mineral products	19728.90	0.00	0.00	0

Chemical products	47.09	21.41	20.68	96.6
Plastics & rubber	1.32	1.14	0	0.0
Hides and skins, leather, etc.	26.82	26.82	0.33	1.2
Wood & articles of wood	50.39	47.14	25.31	53.7
Textile & textile articles	1829.06	1,829.06	1,694.29	92.6
Footwear, headgear, umbrellas, etc.	5.77	5.77	0.93	16.1
Articles of stone, cement, etc.	96.69	0.29	0	0
Precious stones, etc	99.71	2.99	0	0
Base metals & products	6,606.15	6.63	0	0
Machinery & electrical equipment	778.97	290.17	0	0
Transport equipment	19.99	19.99	0	0
Optical & precision instruments	196.78	73.83	0	0

Source: IEC Calculation based on UNCTAD GSP utilisation database

Nonetheless, Rwanda's exports to the EU are not well-diversified and the country does not make use of preferences in numerous sectors. Despite, prepared foodstuffs having a high average MFN rate of 15.7%, Rwanda only utilizes 59% of the available preferential tariff under the EBA. This could potentially highlight the challenges encountered by operators in the sector in meeting the RoO requirements. Likewise, Rwanda does not currently make use of the EU preferential tariff for animal products at all, despite animal products facing a high average MFN margin of 17.3% from the EU. This is a missed opportunity for Rwanda which could have taken advantage of trade preferences under the EBA and potentially increase its competitiveness in the international market. Moreover, in sectors where the volumes of exports are low, such as machinery and mechanical equipment, Rwanda does not export any product under the GSP. There are numerous other sectors with low use of preferential schemes such as footwear, headgear, umbrellas, and hides and skins and leather.

In contrast to other GSP schemes offered by other GSP donor countries, Rwanda showcases greater use of PURs under the EU GSP. In a recent study, comparing PURs under different schemes, it is found that in 2018, Rwanda's PUR under the EU GSP reached 91% in contrast to the PUR under different schemes where the PURs with regard to the Canadian GSP were as low as 10.8% (UNCTAD & COMESA, 2023). With regard to the US, Rwanda trades under two preferential schemes, namely the US GSP and AGOA. Rwandan exporters trade more under the AGOA as opposed to the US GSP. Rwanda's PURs are to some extent proportional to the volume of exports destined to the markets, with lower overall volumes associated with low PURs. This denotes that Rwandan exporters are strategically utilising preferential market access based on their largest market destinations, despite some other markets, like Canada having easier RoO criteria.

Table 6 Rwanda: Overall Utilisation Rates of Preferential Schemes (2018)

Country/Region	Scheme	Exports (USD thousands)				Coverage (%)	Utilisation Rates (%)
		Total	Dutiable	Covered	Received		
Canada	GSP	1,950	158	158	17	100	10.8
EU	GSP	80,721	13,053	13,053	11,879	100	91
Japan	GSP	3,751	2,148	302	16	14.1	5.3
US	AGOA	69,254	7,144	7,021	4,089	98.3	58.2
	GSP			3,953	1,612	55.3	40.8
	All Pref.			7,021	5,701	98.3	79.8
TOTAL		155,676	22,503	20,534	17,613	91.3	85.8

Source: UNCTAD & COMESA (2023)

The next chapter reviews the evidence of the impact of rules of origin and trade flows, as well as the impact on participation in regional value chains.

4 Impact of Rules of Origin

4.1 Evidence of Impact of RoO on Quantum of Trade

EU RoO can create both opportunities and barriers to African exports to the EU. While RoO are intended to protect the interests of EU and partner industries by ensuring that only products that meet certain criteria are granted preferential access to the EU and partner markets under the agreements, they can also make it difficult for Africa countries to export their products to the EU. EU RoO can be complex and difficult for African exporters to comply with, especially for MSMEs that may not have the technical expertise or resources to meet the requirements. In such circumstances, RoO act as a non-tariff barrier to trade on African exports. In this chapter, the report considers the impact of RoO on trade flows in Africa and on the development of value chains.

Unlike tariffs, which incur a direct cost in terms of duties paid, RoO inflict indirect costs resulting from the need to comply with RoO requirements (compliance cost). The economics of RoO in PTAs is straightforward - it is only in the interest of exporters to request preferential status if the preferential margin (calculated as the difference between the applied MFN tariff rate and the preferential tariff rate) exceeds the costs of compliance (see Box 2).

Box 2. Understanding the impact of RoO compliance costs on Trade.

Many studies have shown that satisfying RoO requirements involve compliance costs (Cadot, de Melo, & Pondard, 2006; (UNCTAD, 2019). A shirt producer in Madagascar producing in a competitive environment will decide to export using the preferential trading arrangement only if the cost of complying with the preferences is lower than the value of the Most Favoured Nation tariff.¹³

In practice, it is difficult to estimate the effects of RoO. First, it is difficult to translate the texts contained in trade agreements describing the two types of requirements, that is the general rules and the PSR, into indicators that can be used for analysis.¹⁴ Information on RoO requirements is highly multidimensional and presents difficulties for statistical analysis and interpretation. Therefore several

¹³ The EU MFN tariff on apparel is from Gourdon et al. (2020) which show that compliance cost component can be broken down into three sub-components:

- A distorted cost component, c_i^D , resulting from the beneficiary being forced to source from the partner for instance meeting a minimum Regional Value Content (RVC);
- An administrative cost component, c_i^A related to obtaining a valid Certificate of Origin (CoOi) and undergoing post-importation audits by customs authorities;
- A rent-sharing component, μ_i , between the exporter of intermediate goods to the FTA partner exporting the final product to the producer of intermediates. This would apply when cumulation is limited (e.g. bilateral rather than diagonal). Humphrey (2020, table 1) contrasts the cumulation rules of the EU with those of other grantors of preferential access. He notes that EU cumulation rules are more restrictive. In the shirt example, this might then result in a higher price paid by the Malagasy shirt producer.

¹⁴ Over 54000 different Product-Specific Rules (PSRs) are recorded in the two data bases tallying RoO across many PTAs. PSRs are defined at the HS6 (5800) level. The number of PSRs tallied in these data bases outnumber HS6 codes (5800) by almost a factor of 10. In an earlier report commissioned by the EU wishing to simplifying EU PSRs, the authors numbered over 500 different PSRS for the EU system of RoO.

metrics are required, such as overlap on approaches, regularity distance, and observation-based indices (See Annex II for a technical discussion on how to decipher rules of origin).

Second, only a few countries publish trade statistics according to the trade regime requested by exporters.¹⁵ This means that data on PUR necessary to evaluate the compliance costs identified in Box 2 is missing. Moreover, to distinguish between fixed and variable costs firm-level data at the transaction level would be required. Such data are rarely available.

Third, firms have different production costs, and prices will differ from production costs when production does not take place under perfect competition. Some exporters are not aware of their access to preferences. In other instances, firms apply for preferential access to their products when the MFN rate in the destination country is already zero. Thus, based on these different variables, understanding the true impact of RoO on trade is difficult to quantify. Moreover, at best positive utilisation rates only suggest that preferential margins outweigh compliance costs. Positive utilisation rates are not an estimate of compliance costs. On the other hand, no uptake of preferences could imply that exporters are not aware of the preferences.

Several studies have, nonetheless, attempted to study the costs associated with compliance with RoO at the firm level. One of the key outcomes to be observed across studies is that the fixed costs associated with preference utilisation depend on a broad range of factors, including the trading partners, the tariff rates applicable as well as the industries in which exporters operate (Hayakawa, Jinji, Matsuura, & Yoshimi, 2019). In an earlier study, using detailed customs data from Thailand, Hayaka *et al.* report that the median costs associated with FTA utilisation ranged between USD 300 to USD 2,000 per transaction, with imports from China incurring costs of USD 2,000 while those from Australia incurring a cost of USD 300 (Hayaka, Laksanapanyakul, & Urata, 2016). A more recent study by Hayakawa *et al.* (2019), looking at RoO costs embedded in Japanese imports, reveals that compliance with RoO results in an additional production cost of 2%. In another study, Albert, and Nilsson (2016) indicate that EU exports to Iceland incur fixed costs ranging between EUR 20 to EUR 260 per transaction for RoO (Albert & Nilsson, 2016). However, this study relied primarily on small-value express consignments, so the COO issuance and verification costs are probably not representative.

Box 3 Different Types of Compliance costs from RoO

Producers and exporters encounter various types of compliance costs in meeting RoO requirements, including the following:

¹⁵ Nilsson (2016) and Kasteng and Inama (2016) estimate that about two-thirds of EU exporters use tariff-free access in their exports to partners while partners use preferences for over 90% of their exports to the EU. Thanks to data on the EU's preference utilisation rates (PURs), Crivelli and Inama (2017) identify critical products warranting further scrutiny of their ROOs (PURs below 70% and preference margins above 2 %).

- **Administrative Costs:** Producers and exporters need to document and record RoO compliance, requiring the investment of both resources and time. Examples of administrative costs can include gathering documentation, filling out forms, obtaining and managing certificates of origin, supplier declarations, and ensuring accurate record-keeping. Exporters may be required to also provide other paperwork such as invoices and bills of materials and production records. These require thorough record-keeping and documentation management.
- **Compliance Verification:** In certain cases, to ascertain compliance with RoO, producers or exporters can undergo verification through audits or inspections by customs authorities or third-party certifiers.
- **Production Adjustments:** To comply with RoO requirements, exporters may also have to adjust their production processes. Producers may have to procure inputs from different sources, modify production techniques, and in some cases, ensure traceability across their supply chains. Such adjustments may result in additional costs, especially if RoO compliance requires numerous adjustments as well as if producers export to different markets with differing RoO requirements.
- **Technical Expertise:** Producers and exporters may require specialised knowledge and expertise to understand and apply RoO regulations and may therefore require employing or consulting experts.

In addition, compliance costs can also be high for firms exporting to several markets under different PTAs. In the case of Shoprite, a South African retailer exporting to several countries in Southern and Eastern Africa, preferences were worth \$13.6 million on \$550 million of sales (Gillson, 2012). The company estimated costs of compliance at \$5.8 million with a breakdown of 40% for staff to maintain customs data, 40% on in-house clearing and forwarding and 20% on the maintenance of a library to demonstrate compliance with rules of origin. This indicates that for certain companies, especially when compliance with different RoO is applicable can be complicated and costly.

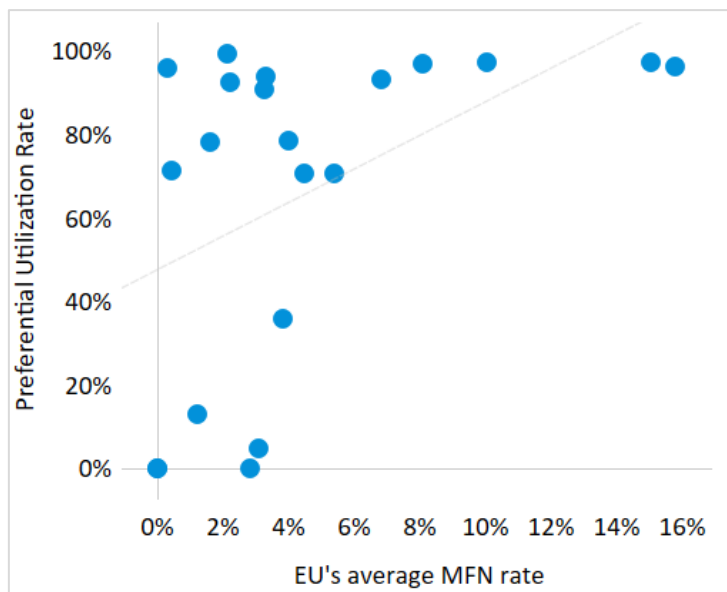
Other studies have equally attempted to assess RoO compliance costs in function of preferential margins. Using firm-level transaction data for Bangladesh, Sytsma (2021) estimates that compliance costs under double transformation amounted to $\frac{3}{4}$ of the preferential margin (Sytsma, 2022). While it is assumed that exporters would not export under a preferential regime if the preference margin is greater than compliance costs or where there are low preference margins, several estimates show high PURS for preferential margins below 3% (see e.g., Keck and Lendle, 2012 and Powers and Ubee, 2020). For example, under the United States–Mexico–Canada Agreement (USMCA), the RoO for car imports is relatively stringent by global standards (tracing list with RVC 62.5%) (Powers & Ubee, 2020). Yet, it records a high PUR utilisation of over 80%. This highlights that low margins and complex RoO can still be associated with high rates of preference utilisation when annual shipments worth tens of billions of dollars are at stake. This example shows that the magnitude of the preference margin is not the sole determinant of the degree of preference utilisation.

Another determinant of PUR includes the size of firms. Cadot *et al.* (2014) use Colombian firm data to explore the determinants of preference utilisation. They find that preference utilisation is

higher for larger firms but lower for those that procure intermediates from a wide range of sources (Cadot, Graziano, Harris, & Volpe, 2014). In other words, they appear to find evidence that diversified sourcing options are restricted by the restrictiveness of RoO. They also find that preference utilisation correlates strongly with export growth and more so for large firms.¹⁶ Moreover, the association of high PUR with low preference margins can also suggest that fixed costs arise at the firm transaction level. Large firms are more capable of absorbing fixed costs given abundant human and IT accounting resources. For commercial-size transactions, it might also indicate that RoO are tailored by policymakers to reflect the regional productive capacity of the firms.

In the case of African LDCs, it is found that as the MFN rate rises, so does the PUR. It means that when the EU's average MFN tariff is higher, African LDCs make greater use of preferential arrangements with the EU (Figure 7). Thus, in this case, it could be inferred that the costs associated with complying with EU RoO do not exceed the benefits to be derived from tariff liberalisation, making it profitable for African exporters to use preferential schemes instead of trading under the MFN.

Figure 7. The EU's average MFN rate against the PUR of African LDCs



Source: UNCTAD GSP utilisation database, ITC market access map

4.1.1 Impact on Trade Flows and Diversification

The impact of RoOs on trade flows is influenced by a range of factors, including the market structure of countries, the complexity of the RoO as well as the costs associated with compliance with RoO (Augier, Gasiorek, & Lai-Tong, 2005). The size of the economy, the level of diversification

¹⁶ However, in this study, as in most firm-level datasets, exporting firms are not necessarily the producers. Exporting firms can also be a brokerage firm.

in a country, and specialisation in certain sectors can equally influence the impact of RoO. Generally, it would hold that larger and more diversified economies would find it easier to comply with RoO requirements, while smaller and less diversified economies may face more challenges. Additionally, countries that specialise in certain sectors or are more export-oriented may be more affected by RoO requirements.

In general, RoO can indirectly promote export growth by creating a predictable and stable regulatory environment for trade. By setting clear and consistent criteria for determining the origin of products, the RoO can help to reduce uncertainty and facilitate trade. Moreover, by incentivising the use of locally sourced inputs and encouraging firms to invest in local production, RoO can promote export growth and diversification within an economy.

However, there is also significant literature on how RoO constrains trade. For instance, a study conducted by Augier *et al* (2005), on three regional blocs (EU, CEFTA and EFTA) between 1995 to 1999, found that in the absence of provisions allowing for cumulation, RoO can constrain trade. Moreover, the study also revealed evidence indicating that the lack of cumulation provisions has a greater bearing on intermediate trade than manufacturing trade. Nonetheless, the higher the tariffs, the lower the impact that provisions of cumulation will entail (Augier, Gasiorek, & Lai-Tong, 2005).

While the EBA scheme is an ambitious initiative, its initial impact on trade was modest. Many LDCs did not necessarily have adequate infrastructure, productive capacity, and other resources to take full advantage (and meet the standard requirements) of exporting to the EU. LDCs also often encounter a range of other internal issues, such as political and macroeconomic instability, that hindered their ability to benefit from preferential trade terms (Faber & Orbie, 2009). Up until the reform of the GSP RoO in 2010, the RoO under the EBA were largely perceived as restrictive, explaining why preferential market access under the Agreement remained largely underutilised. In the years following the implementation of the EBA, it was found that few African LDCs exported clothing under the Agreement. The restrictive RoO prevented manufacturers from procuring inputs from low-cost sources (Brenton & Özden, 2007). However, it is worth noting that the EBA might have also been underutilised because some of the RoO under the Cotonou Agreement were more favourable than under the EBA (Brenton, 2003).

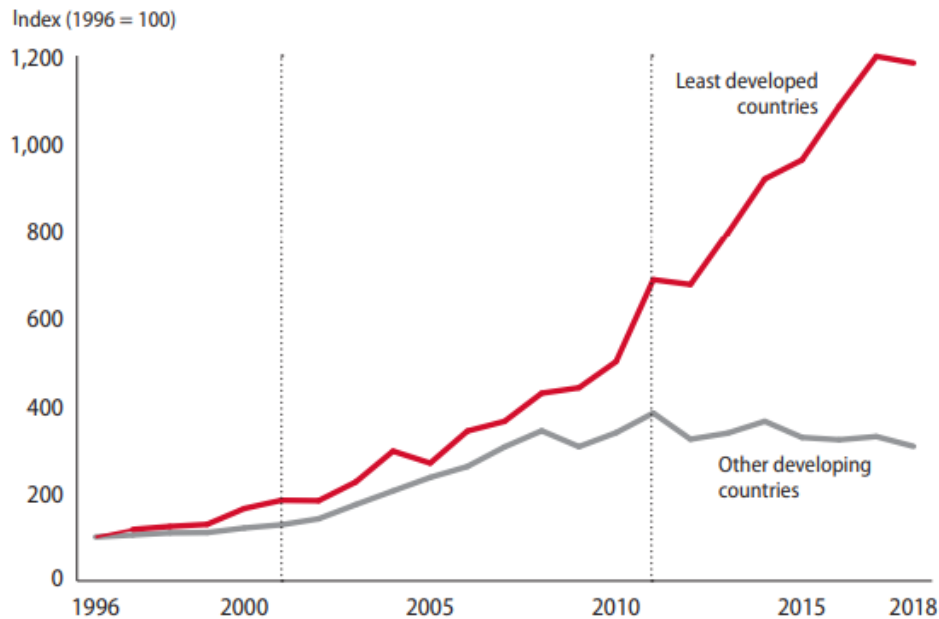
Specifically for African countries, there is no scope for regional cumulation, despite the large number of African countries benefitting from the EBA. Previously African countries benefited from full cumulation under the Cotonou Agreement (UNCTAD, 2022). While certain African countries nonetheless retain the option to cumulate under the EPAs, the preferential tariffs and RoO under EBA are much more lenient than those under EPAs. However, under the current configuration, *“if an ACP State desires to take advantage of the EBA duty- and quota-free treatment, it will have to do so as a GSP beneficiary and will thus lose the opportunity for full cumulation with its ACP partners. On the other hand, if an LDC that is an ACP State wants to take advantage of the more favourable Cotonou cumulation system, it will be subject to the customs duties and quantitative*

limitations specified under the Cotonou Agreement, where applicable” (UNCTAD, 2022, p. 14). Cumulation among African countries under the EBA could have promoted the emergence and strengthening of regional value chains. As illustrated in the EU-CEFTA-EFTA example, the lack of provisions on cumulation represents a significant barrier to increased opportunities for trade and diversification. However, cumulation can nonetheless be obtained through special permission from the EU.

When comparing PURs under the EU GSP and the US Africa Growth Opportunity Act (AGOA), several studies found that the more flexible and generous RoO under AGOA resulted in greater utilisation rates as well as greater volumes of exports to the US. The textiles and apparel sector is generally perceived to have complex RoOs under the EU GSP on account of the range of product-specific criteria that exist for products under this sector and the fact that textile and apparel do not benefit from general tolerance rules applicable to other products. On the other, under the US AGOA, LDCs can procure fabric and yarn from any other country and still meet the RoO requirements when exporting final products to the US (Kommerskollegium, 2012). One of the studies establishing this evidence is by Portugal-Perez whereby the utilisation of preferences for clothing among 22 Sub-Saharan African countries in 2004 was 97.4% under the US AGOA and 91.2 per cent under the EU’s EBA scheme (Portugal-Perez, 2008).

However, in recent years, trade under the EBA has increased considerably. EU imports under the EBA increased from EUR 17.1 billion in 2014 to EUR 25.2 billion in 2019, representing a 47% rise (European Commission, n.d.). Similar to the African experience, it was found that the reforms brought about in RoO for LDCs in 2010, especially shifting from the double to the single transformation rule in textiles, greatly improved the utilisation rates of the EBA in other LDCs as well as resulting in an increase in imports by the EU from the LDCs (see Figure 8). Moreover, according to Sytsma (2022), the increased leniency of the EU’s RoO led to considerable revenue gains for exporting firms in Bangladesh where average export earnings increased by around 30%, where firms were able to increase production capacity without incurring high marginal costs. On this basis, it is observed that simpler RoO promotes trade while more complex RoO act as a barrier to export growth.

Figure 8. EU textile and clothing imports, 1996-2014



Source: (Carrère & Guillaumont, 2019)

Since trade in textiles and apparel increased considerably following the simplification of RoO, this raises the possibility that exporters may be dependent on generous RoO. Simple RoO allow exporters to use inputs from a wider range of sources, making it easier and more cost-effective to comply with the RoO requirements. Additionally, requiring only a single transformation can reduce the administrative burden and costs associated with complying with RoO requirements. The dependence on generous RoO may be more pronounced in specific value chains, particularly those that rely heavily on imported inputs. For example, the textile and clothing industry is often reliant on imported inputs. For instance, while African countries manufacture large volumes of cotton, these tend to be primarily exported (AU, EU & ITC, 2022). In turn, many African countries import yarn from other countries. Moreover, the reliance upon generous RoO can also be more prevalent in smaller economies where there are low levels of diversification because of limited access to local inputs. In such cases, generous and flexible RoO can be particularly important for promoting export growth and the utilisation of preferences.

With respect to diversification, it can be observed that the rise in imports has occurred in very narrow product groups – such as textiles and clothing. The Herfindahl index of concentration shows that overall, LDCs are less diversified than other developing countries at similar levels of per capita income. However, once LDC oil exporters are excluded, the differences are less pronounced (Carrère & Guillaumont, 2019). Looking for reasons behind this lacklustre performance, Carrère and Guillaumont (2019), note three characteristics of trade policies of grantors of preferential access which can explain the results:

- A substantial preference erosion to LDCs coming from preferential access to other countries (through FTAs) cut in half the export-weighted average preferential access to the EU to 3 % and to 1 % to the US
- A traffic light system used in the Global Trade Alert (GTA) data base shows that the number of harmful measures to trade exceeded the benign or beneficial measures and that these come mostly from industrialised countries and that they fall mostly on LDCs, over a period of 2008-2017¹⁷; and
- Arguably, exceedingly restrictive RoO limited the ability of LDCs to perform better.

Duty-free market access for LDCs to the US and EU markets through AGOA and EBA has not reversed their declining share of global trade, suggesting that these arrangements did not boost their exports. Factors such as trade policies of the grantors, preference erosion, highly restrictive RoO in sectors where LDCs had market access, and limited implementation capabilities in LDCs all impact LDCs' capability to export. The level of processing in a product also affects the burden of RoO, along with the administrative costs of compliance, which can diminish the benefits of preferential arrangements. Table 7 shows higher R-index values for tariff lines where LDCs export to the EU and US, indicating their difficulties in meeting RoO in general. The R-index is an indicator of the trade-restrictiveness level of RoO. The index ranges from 1 (least restrictive) to 7 (most restrictive), calculated at the tariff line level. Notwithstanding the limitation of R-index measures¹⁸, for the LDC group (of 48 LDCs, 33 are in Africa), there is no direct evidence that RoO were accompanied by, let alone that they triggered, increases in aggregate exports, or increases in product diversification. Rather, the lacklustre trade performance would be attributable to low implementation capabilities in recipient countries, structural handicaps, and the impact of (other than preferential access) trade policies of industrialised trade policies.¹⁹

Table 7. LDC Preferential Margin and the RI index

EU

Lines with positive LDC export	Weighted average preference margin (%)	Weighted average R-Index value
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¹⁷ Using difference-in-difference approach in a gravity model, Evenett and Fritz (2015) estimate that these harmful measures reduced export growth of LDCs by \$265 billion over 2009-2013, equivalent to 31 % of the total value of LDC exports.

¹⁸ R-index is a ranking from 1 to 7 given to the categorisation of rules and is intended as an overall indicator of how trade-inhibiting the requirements are that must be met by a product to obtain originating status (Cadot O. *et al*, 2006). See Annex II for further discussion of the R index.

¹⁹ This does not mean that origin requirement for FTAs with the EU caused a reduction in the LDC market share although some observers argue that the 'cold shower' effect of reciprocity in FTAs (over the non-reciprocity under GSP and other non-reciprocal preferences have contributed to the lacklustre performance of LDCs during this period.

Preferential margin peaks	570	17.13	6.08
Low preferential margin	824	0.01	3.19
Total number of tariff lines	3,509	4.64	3.93

US

	Lines with positive LDC export	Weighted average preference margin (%)	Weighted average R-Index value
Preferential margin peaks	267	8.08	6.64
Low preferential margin	1,009	0.002	6.10
Total number of tariff lines	1,783	0.86	6.33

Note: The preferential margin tariff peaks are defined for tariff lines with preference margins in excess of 12% in the case of the EU or 3% in the case of the EU. The low margins for tariff lines are below 1% for the EU or below 0.05% for the US.

Source: Carrère and de Melo (2010)

Besides impacting the trade flows of partner countries, RoO may also have undesired effects on third countries and distort global prices. The reduction in imports from third countries is evidence of distortion costs induced by restricted sourcing since firms are forced to source inputs from partners, even if those are at a higher cost. Under the North American Free Trade Agreement (NAFTA), for instance, Mexican apparel producers were forced to source cotton from the US to produce apparel. This led to a rise of 11.9% in cotton prices to Mexico in contrast to US exports of cotton to other destinations (Carrère & De Melo, 2006). Likewise, it has been estimated that within Latin America, on average, RoO have tariff equivalents of around 11% and 9% for intra and extra-regional trade agreements respectively for intermediate products that enter into supply chain trade (Cadestin, Gourdon, & Kowalski, 2016). Thus, by restricting firms' sourcing opportunities, RoO can reduce imports from third countries and force manufacturers to incur higher prices on inputs associated with origin requirements.

4.2 Impact on Regional Value Chains in Africa

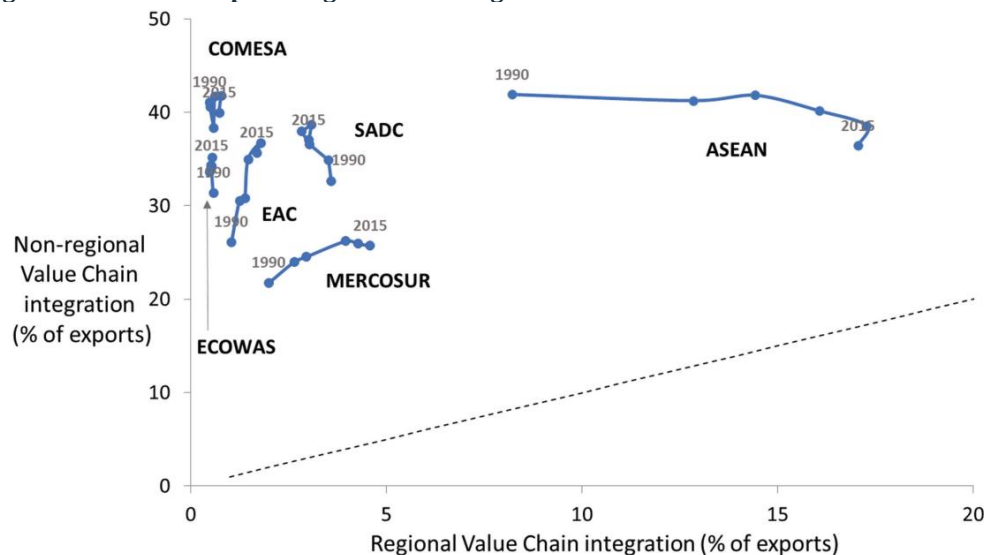
4.2.1 Overview of Regional Value Chains in Africa

Regional integration in Africa is characterised by multiple regional economic communities that have overlapping memberships. At present, the African continent accounts for eighteen intraregional trade agreements, although the African Union only officially recognises eight Regional

Economic Communities (RECs).²⁰ The African continent has known economic fragmentation for a long period of time. As a result, backward and forward integration across value chains in Africa has been limited (see figure 9). Nonetheless, increasing Africa's participation in regional and global value chains has been one of the continent's top priorities. Numerous initiatives have been undertaken across the continent to promote regional and global value chains.

However, these initiatives have encountered relatively limited success. The Southern African Development Community (SADC) is one of the only RECs to have attained a marginally higher level of integration. Even then, the level of integration witnessed a decline between 1990 and 2015. Despite SADC's relative success, it is far from achieving the integration levels observed in South America's Common Market of the South (MERCOSUR) or the Association of South-East Asian Nations (ASEAN). Between 1990 and 2016, regional value chain integration in ASEAN increased to over 15%. In contrast, all major African RECs, have a regional value integration score of less than 5%.

Figure 9. GVC Participation against extra-regional trade over time



Note: The share of GVC trade in total GVC trade involving only production partners in the same region (regional GVC integration) against the share of GVC trade involving only partner countries outside the region in total GVC trade (nonregional GVC integration). The dotted line represents the 45-degree line for symmetry between extra and intra-regional sources of the value chain. Source: De Melo & A. Twum (2021)

There are several opportunities for the development of value chains across the continent identified in the literature. The priority value chains for four RECs are presented in Table 8. As can be observed, many of the different RECs prioritise the development of regional value chains in broadly similar sectors, namely agro-processing; pharmaceuticals; textile and apparel. Many regions are also looking to extend their value chains in the services sector, with the Economic Community of

²⁰ These include the Arab Maghreb Union (UMA); the Common Market for Eastern and Southern Africa (COMESA); the Community of Sahel-Saharan States (CEN-SAD); the East African Community (EAC); the Economic Community of Central African States (ECCAS); the Economic Community of West African States (ECOWAS); the Intergovernmental Authority on Development (IGAD); and the Southern African Development Community (SADC).

West African States (ECOWAS), for instance, seeking to develop Member States' competitiveness in Information and Communication Technologies (ICT).

Table 8 Priority Value Chains in Selected RECs

REC	Southern African Development Community	Economic Community of West African States & West African Economic and Monetary Union	East African Community	Common Market for Eastern and Southern Africa
Policy Document	Regional Industrialisation Roadmap 2015-2063	West Africa Competitiveness Programme 2014 – 2020	EAC Development Strategy 2021/22 – 2025/26	COMESA Industrialisation Policy 2015-2030
Identified Value Chains	▪ Agro-processing, ▪ Minerals and mining, pharmaceuticals, ▪ Other consumer goods, ▪ Capital goods, and ▪ Services	▪ Cassava, ▪ Textile and garments, ▪ Mango, ▪ Information and communications technology, ▪ Onion, ▪ Pineapple, ▪ Hides, and ▪ Skin and leather	▪ Mineral/ extractive ▪ Textiles ▪ Leather ▪ Pharmaceutical ▪ Automotive ▪ Veterinary products ▪ Herbal products ▪ Fruits ▪ & Vegetables	▪ Agro-food processing ▪ Fisheries ▪ Forestry (wood and wood products); ▪ Textiles and garments; ▪ Leather and leather products; ▪ Mineral beneficiation ▪ Light engineering products

Source: OECD-AU (2022). Africa's Development Dynamics 2022: Regional Value Chains for a Sustainable Recovery. Organisation for Economic Cooperation and Development and African Union.

With the coming into effect of the African Continental Free Trade Area (AfCFTA), regional value chains in the region could be given a considerable boost. The Agreement has the potential of transforming the heterogeneous socio-economic spectrum of African countries and unifying them into a more connected market. It is expected that the Agreement will boost intra-regional trade, with intra-African trade in industrial products increasing by 25-30% and trade in agriculture and food products increasing by 20-30% compared to a scenario where no such agreement was signed (UNECA, 2018).

Simple and transparent RoO are key for African regional value chains (UNCTAD, 2019). The RoO under the various RECs in Africa are diverse, with the rules under ECOWAS and ECCAS being among the simplest and most transparent for manufacturers and exporters to comply with (Humphrey, 2022). At the time of writing this study, the RoO under the AfCFTA were still being finalised, with negotiations over certain sensitive sectors, taking longer to reach a consensus. Research undertaken by UNCTAD across certain key value chains, namely cocoa, cotton, and tea, indicates that

transparent, simple, and flexible RoO can play an important role in addressing economic fragmentation on the African continent and allow countries to better participate in regional value chains and improve value addition (UNCTAD, 2019). Moreover, across value chains that require significant economies of scale for improved competitiveness, RoO can improve trade complementarities and boost advances across such value chains.

4.2.2 Interplay of African Regional Value Chains and EU RoO

One of the key priorities of the EU trade intervention efforts in Africa relates to promoting economic integration on the continent and advancing regional value chains. Through the EPAs, the EU aims to promote the development of regional value chains. According to the European Commission, EPAs are “as much about trade between the countries in an EPA as they are about trade with the EU” (European Commission, 2018, p. 2). Apart from country-level EPAs, all EPAs contain a regional preference clause that ensures that parties to an EPA grant the same preferential terms to other countries within the region. For instance, Article 108 of the EU-SADC EPA states that “any more favourable treatment and advantage that may be granted under this Agreement by a SADC EPA State to the EU shall be enjoyed by the other SADC EPA States” thus also aiming to further liberalise trade among African countries.

In the case of the EPAs, one of the ways in which provisions on RoO have influenced regional value chains relates to the provisions on cumulation. Regional EPAs, such as the EU-SADC EPA contain provisions not only allowing bilateral cumulation with the EU but equally diagonal cumulation with other Parties to the EPA and other ACP EPA states. For instance, as per Article 4 of Protocol 1 of the EU-SADC EPA, “materials originating in a SADC EPA State, the EU, other ACP EPA States or in OCTs shall be considered as materials originating in the SADC EPA State where the materials are incorporated into a product obtained there, provided that the working or processing carried out there goes beyond [stated] operations...”. With regard to bilateral cumulation, previous studies undertaken indicate that Malagasy firms have reduced their dependence on European markets. With the strict cumulation rules of the Lomé/Cotonou RoO, a significant share of textile inputs was previously procured from the EU and has since then declined (Andersson, 2009).

As per the EU, the flexibility of RoO under the EU-ESA EPA and the provisions of cumulation have given manufacturers in the ESA countries greater opportunities regarding sourcing inputs and organising their supply chains (LSE, 2021). In the ex-post review of the EU-ESA EPA, it was found that certain countries do benefit from the cumulation provisions in the Agreement. For instance, the customs authorities in Mauritius and Seychelles indicated that exporters use provisions on bilateral cumulation in the manufacturing of products such as prepared or preserved fish (HS1604) and vanilla pods (HS08905), among others (LSE, 2021).

In this respect, Madagascar has been able to utilise cumulation flexibilities to export to the EU.

Madagascar's geographical proximity to Mauritius plays a key role in facilitating value chains in the region (Pasquali, Godfrey, & Nadvi, 2021). Through an investment from Mauritius, Madagascar has further been able to vertically integrate some operations and reach double transformation through its cumulation with Mauritius. Madagascar's apparel industry has successfully established important networks with Mauritius, whereby Madagascar procures yarn and fabric from Mauritius to be used in garment manufacturing processes in Madagascar. In this way, Madagascar can meet the double transformation requirement under the EPA and benefit from preferential market access to the EU. Moreover, This is the case, for example, where a company headquartered in Mauritius and which carried out yarn and fabric operations in operations in Mauritius, further processed and knitted products in Madagascar from where it exported to the EU. Such vertically integrated enterprises reported that the RoO forced this investment to take place, but also led to greater value addition and the need to identify more specialised higher-value markets, with less volume. Thus, in this instance, it appears that the RoO led to greater investment and to a specialisation in a different market segment. This was, however, not representative of the majority of firms encountered in Madagascar that were positioned in CMT production for the US market.²¹

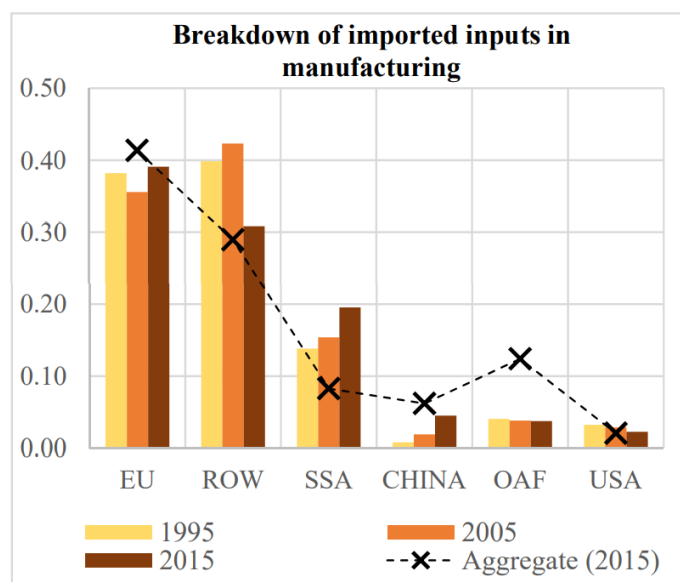
Overall, the levels of cumulation remain low between EU-ESA African countries. One of the challenges that were identified was that many countries in the region find it difficult to cumulate diagonally. To cumulate diagonally, countries are required to sign an agreement on administrative cooperation. However, ESA countries have found the conclusion of an agreement to be burdensome (LSE, 2021). Pending this Agreement, countries cannot maximise opportunities for further cumulation. Moreover, since countries cannot cumulate with economic powerhouses such as South Africa where they could potentially source important outputs, this acts as another deterrent to potentially restricting the further development of regional value chains. There is a strong case to be made for cumulation with South Africa for most African countries.

Given that the GSP schemes do not allow for cumulation between African countries, they promote domestic value addition instead. To meet the origin requirements, exporters trading with the EU are incentivised to use locally sourced inputs and invest in local production. This can have positive impacts on development, creating employment and opportunities for diversification. However, the domestic value addition required by RoO can also be a challenge for many firms, particularly MSMEs. Meeting RoO requirements can require significant investment in domestic production capacity and may require access to expensive or specialised equipment and technology, which may not be necessarily available across LDCs. Additionally, meeting the RoO requirements may require exporters and manufacturers to source inputs from a limited number of suppliers, which can increase costs and reduce competitiveness as highlighted previously. It is hence important for RoO to strike a balance between promoting domestic value addition and creating unnecessary barriers to trade. RoO should be designed in a way that encourages domestic value addition without making it overly burdensome for firms to comply.

²¹ Stakeholder consultations in Madagascar

Thus, in the case of Rwanda, the EBA has a limited role in advancing the development of regional value chains. In a recent study assessing Rwanda’s sourcing trends when it comes to intermediate inputs, it was found that the EU is the most-favoured source for Rwandan manufacturing firms (Frazer & Van Biesebroeck, 2019). Imports from the EU in this respect surpass those from other Sub-Saharan African countries and the rest of the world. However, when it comes to the agricultural sector, which comprises the greatest exports to the EU under the EBA, domestic value addition is prioritised. On the basis of consultations, it is found that certain agro-processing firms nonetheless have to source packaging materials either from the region or from overseas markets, including China where more competitive pricing options are available.

Figure 10 Rwanda’s intermediate inputs trends, 1995-2015



Source: Frazer & Van Biesebroeck (2019)

While RoO can have an influence on the development of value chains, there is a range of other factors that impact whether countries are able to trade with each other on the African continent when it comes to inputs. Other factors such as level of investment, adequate infrastructure, industrial capacity, logistics corridors, and regulatory environment, can all be decisive in the success of emerging value chains. For example, firms may need access to skilled labour, technology, and finance to invest in local production capacity. Supportive infrastructure such as transportation networks, logistics services, and electricity are also important to ensure the competitiveness of value chains. Therefore, it is important to consider a range of factors beyond RoO when assessing the potential for value chains to succeed in Africa.

5 Challenges Faced with EU Rules of Origin

5.1 Administrative Challenges of RoO in Trade with EU

Despite the rise in imports from LDCs under the GSP, it is still worth exploring the ways in which the restrictive RoOs hinder the opportunity for even larger volumes of trade with the EU. While the utilisation of preferences under the EBA increased, the 2018 mid-term evaluation conducted by the EU equally reveals that 10 EBA beneficiaries underwent a reduction in their use of preferences by 10% (Development Solutions Europe Limited, 2018). There are numerous factors that continue to constrain the use of preferential RoOs, including costs associated with documentation, the high complexity of standards and requirements as well as the fact that African countries generally cannot cumulate under the EBA.

The costs associated with RoO documentation and administrative requirements are considered a factor hindering the utilisation of preferences. Prior to the self-certification mechanisms and the non-alteration principle, the administrative challenges of the RoO under EU trade preferences were much harder to comply with. For instance, to claim preferential RoO, GSP beneficiaries needed to show evidence of direct transport (European Commission, n.d.). This was particularly cumbersome for landlocked countries such as Rwanda which already incurred higher transportation costs to export markets. Moreover, such documentation was considered hard to obtain in practice (Brenton, 2003). These requirements were therefore deemed as sharing similar characteristics with non-tariff barriers (NTBs), thus offsetting the gains of preferential margins, in many cases (Gradeva & Martínez-Zarzoso, 2009). Thus, the non-alteration principle can be seen as a very positive development for African countries, especially land-locked countries such as Rwanda.

In a bid to simplify the RoO under the EU GSP arrangements and improve the utilisation rates of trade preferences under these arrangements, the rules were reviewed and simplified in November 2010 (Adami, McGarry, & Ugaz, 2011). With the new flexibilities brought about by the non-alteration principle, documentary evidence related to transport is significantly reduced. The reforms undertaken therefore in this respect have responded to the challenges encountered by traders. Moreover, like the GSP, the rules under the EPAs have become more flexible. In the SADC-EPA or the EU-Cote d'Ivoire EPA, the rules pertaining to transportation are more lenient, requiring non-alteration as opposed to direct transportation (European Commission, n.d.). The EU-ESA EPA was amended to include rules on non-alteration rather than direct transportation. As such the EPA participants are allowed to tranship, store and split consignments in third-party countries and still qualify for originating status. In other words, the rules on 'non-alteration' have become much simpler for exporters to meet.

Furthermore, the introduction of the REX system has simplified export formalities by enabling registered exporters to self-certify the preferential origin of their products and simply attaching a statement of origin with the commercial documents identifying the exported products. Hence, the REX is considered a one-off formality whereby once registered, the exporter has no need to apply for a certificate of export for each export. This not only simplifies the procedures involved but equally

reduces delays that were encountered in getting authorisation from customs or trade authorities. Overall, the REX portal is considered user-friendly and easily accessible. The only minor inconvenience is that one needs to be connected to the internet to be able to fill in the form. However, this exercise is only required to be performed once. After an application is made on the online platform, the designated authorities in a country review and confirm the application. Thereon, an exporter becomes known as a ‘registered exporter’.

Nonetheless, certain challenges persist owing largely to the inadequate infrastructure and capabilities in certain African countries. In a survey conducted approximately 10 years ago by ITC in Madagascar, many companies found the RoO applied by trade partners, especially for EU Markets, to be strict and hard to meet (ITC, 2013). France, Belgium, Germany, and Italy are some of the EU markets where the firms recorded the highest share of NTMs encountered. RoO constraints make up 16% of NTMs reported by Malagasy firms. On top of the complexity of RoO, Malagasy firms indicate that the obtention of certificates of origin can be a long and complex process where many of the requirements are also difficult to meet (ITC, 2013). With regard to the EU, the majority of RoO are predominantly in the agro-processing and textile and apparel sectors. With regard to the latter, it is reported that RoO accounted for the second-largest share, 31%, of NTMs reported. Certain garments such as knitted fabrics for women and girls’ clothing faced significant procedural obstacles whereby the administrative slowness of customs authorities and the Ministry of Commerce in Madagascar caused numerous delays in obtaining certificates of origin (ITC, 2013).

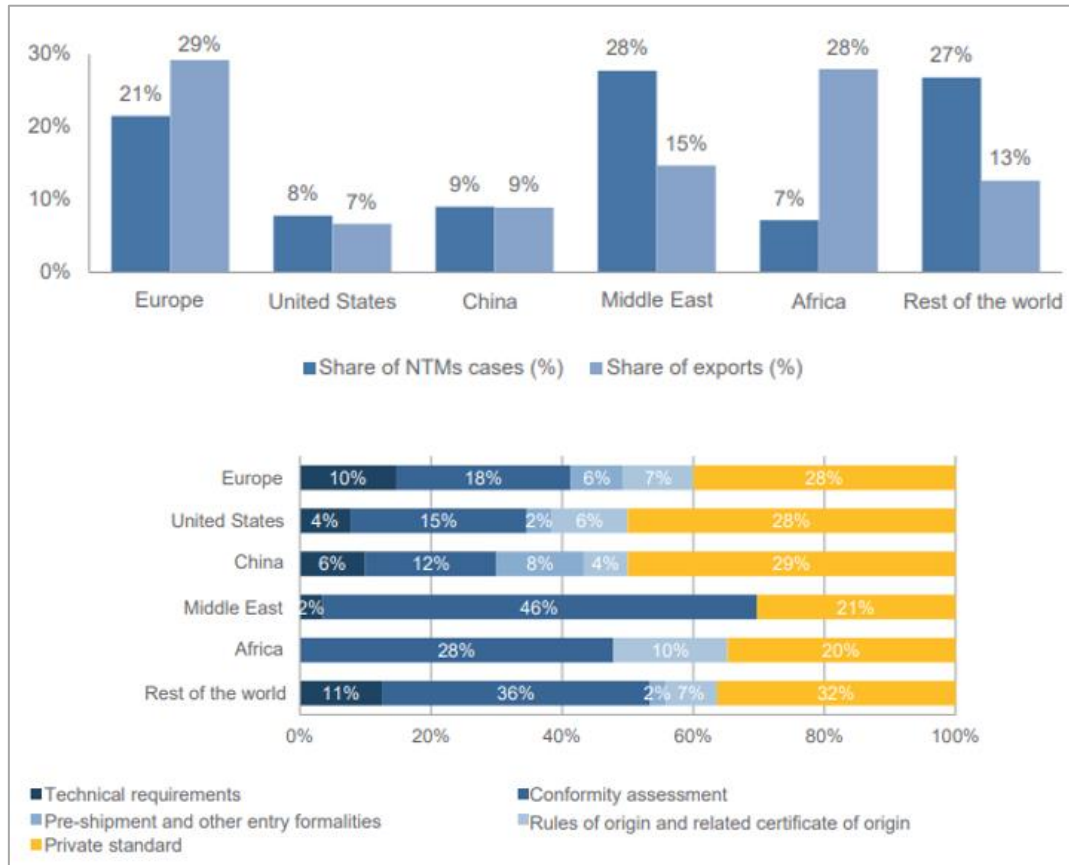
The introduction of the REX system may have reduced some of the problems experienced with delays. As the administrative burdens have lessened and new mechanisms have been introduced to make certification easier, other issues that persist include the productive capacities of firms. Studies have shown that Malagasy firms encounter difficulties in developing their technological capabilities. European-diaspora firms tend to have the most advanced technological capabilities while indigenous Malagasy firms face the greatest challenges. The only sector where local firms have made some headway is the apparels and textiles sector (Whitfield & Staritz, 2018).

Moreover, in previous surveys undertaken by the ITC, Rwandan exporters have also noted several constraints related to RoO. Out of 156 cases of NTMs reported by traders, 8% were related to RoO (ITC, 2014). Traders in Rwanda predominantly reported issues on NTMs with regard to conformity assessment, instead which accounted for 60% of all NTMs recorded. When trading with the East African Community, Rwandan exporters noted RoO-related constraints with regard to agro-processing products such as fruit and vegetable juice (HS 200980). To obtain the certificate of origin in this case, it was noted that exporters have to shoulder high costs.

Moreover, delays in obtaining certificates of origin persist in other countries as well. In NTM surveys conducted in Ethiopia, all MSMEs interviewed found RoO to be an important procedural barrier when exporting. Exports to the EU recorded a high incidence of burdensome NTMs for

Ethiopian exporters, including RoO whereby 21% of reported burdensome NTMs concern trade with the EU. Outside of trade with Africa, RoO tends to be more burdensome with regard to export to the EU (Figure 11).

Figure 11. Burdensome cases of NTMs and private standards by export market



Source: (ITC, 2018)

Other procedural issues encountered include high fees to be paid, redundant documentation, and other forms of informal payments. For instance, in Tanzania, many exporters were not made aware of changes made to the certification system when exporting to the EU. As of 1 January 2018, Tanzanian exporters to the EU are required to issue certificates of origin using the REX system. Yet, most firms did not know about this new requirement and continued to issue certificates of origin using redundant forms and had to start the process of issuing certificates again at the border. Another problem encountered by exporters also includes the lack of recognition of certificates of origin by the importing countries which further delays trade (ITC, 2021). While procedural obstacles were noted by traders from both Europe and developing countries, it is noted that such obstacles occur more frequently for traders in developing countries, thus highlighting gaps in administrative resources and capabilities in developing countries.

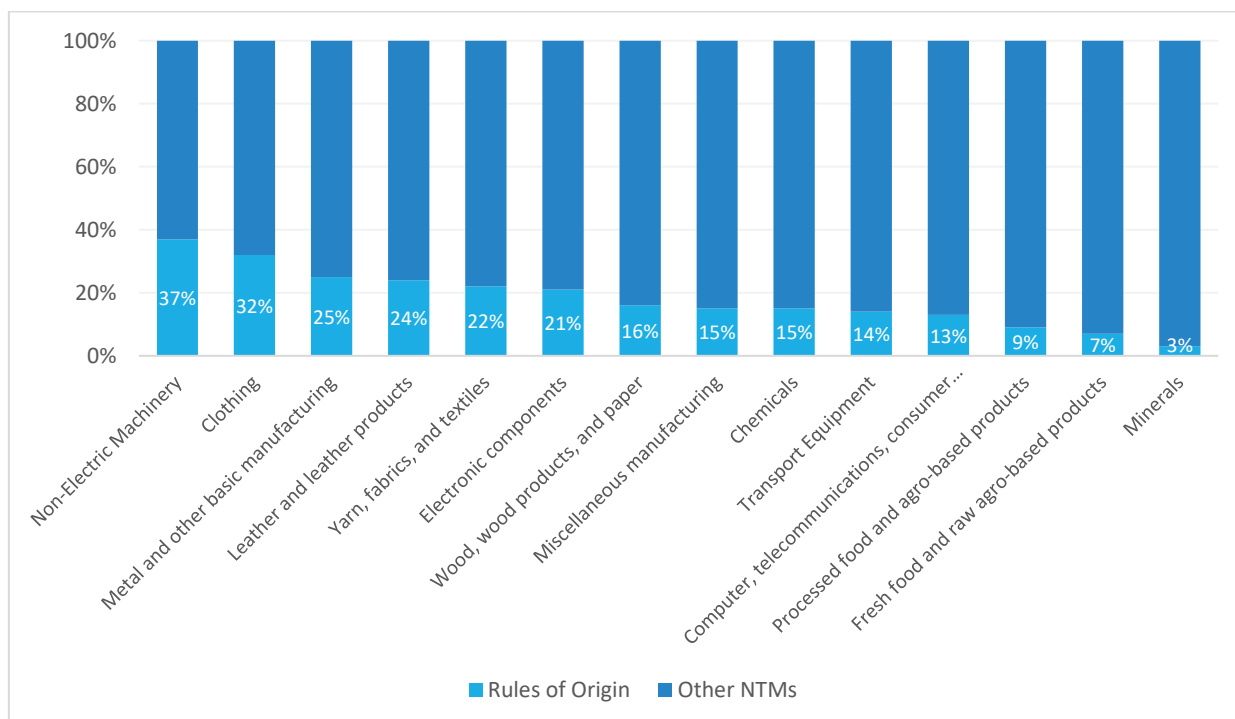
Moreover, some other issues that were highlighted by customs authorities and chambers of commerce in Mauritius and Seychelles include the fact that many exporters do not necessarily have the competencies to fill the forms relating to proof of evidence correctly. They note instances, where the forms filled, do not state clearly where products originate or where the wordings used are wrong which complicates the processes at customs at the time of import. Additionally, they also raised concerns over transparency regarding registered products for REX-registered exporters where customs have to rely on other parties to verify the authenticity of proof of origin (LSE, 2021).

5.2 Special challenges of developing countries in Africa regarding RoO

In addition to the administrative challenges encountered by certain African countries, there are numerous challenges that African traders face in meeting RoO requirements. In surveys conducted by the ITC among 20,000 MSMEs from 38 developing countries and EU-28 countries between 2010 to 2018, it was found that an overwhelming share of respondents (98%) reported that RoO were burdensome, especially for exporters. Since the burden of proof for RoO falls upon exporters, it represents a considerable disadvantage for MSMEs, especially those with limited capabilities to meet the administrative requirements. The complexity of RoO varies, however, according to sectors. For instance, agricultural exporters found RoO to be less burdensome than those engaged in manufacturing. However, this is to be expected given that the rule applied for agricultural products, Wholly Obtained (WO) is easy for most exporters to meet.

Moreover, the complexity of RoO is equally linked to the degree of processing involved in manufacturing. Exporters of goods requiring raw materials or semi-processed products equally find RoO much easier to comply with. In the survey, it was found that 72% of exporters selling processed products reported that RoO were burdensome whilst only 11% of those exporting semi-processed products reported the same. However, there is also a strong likelihood that the complexity of RoO corresponds with the degree of preferential margins. Since there is tariff escalation by the degree of processing around the world, this pattern of complaints suggests that RoO are more burdensome for the activities with the highest preferential margins. Evidence from Rwanda suggests that traders face issues in certain sectors such as agro-processing where they encounter hurdles to trade even among African countries in products such as fruit and vegetable juice (HS 200980). To obtain the certificate of origin in this case, it was noted that exporters have to shoulder high costs.

Figure 12. Share of NTM cases related to rules of origin by sector



Source: ITC NTM surveys, 2010-2018

Third, exporters of high transformation activities with sizeable imports of intermediates like non-electrical machinery, clothing, and metals, report that RoO are the most burdensome NTM in 25% to 37% of the cases. In the case of non-electrical machinery and clothing sectors where many materials are imported, exporters face greater burdens as they encounter additional requirements in tracing and verifying origins.

Moreover, while there have been significant reforms regarding the EU RoO, there are nonetheless complexities that still arise for manufacturers in different sectors as highlighted above. It is believed that many of the PSR contained in the EU-ESA are too complex and do not align with the manufacturing capabilities available in the countries (LSE, 2021). For countries to be able to meet such complex PSRs, significant investment would be required and that may not be necessarily commercially viable for manufacturers. Such challenges have been raised by LDCs. The LDC Group at the WTO, for instance, claimed that most developing countries do not possess the capacity to produce both fabric and clothing and thus double transformation rules hinder preferential trade in such sectors (Humphrey, 2022). As such, the LDC Group emphasised the need for RoO to reflect the reality of global value chains as well as the productive capacities of countries. Moreover, Malagasy companies also found the RoO applied by trade partners, especially certain EU Member States, to be strict and hard to meet (ITC, 2013). France, Belgium, Germany, and Italy are some of the EU markets where the firms recorded the highest share of NTMs encountered. RoO constraints make up 16% of NTMs reported by Malagasy firms.

Moreover, the complexity of RoO also extends to understanding what is required from manufacturers. As the ex-post review of the EU-ESA EPA indicates, “understanding and interpreting the RoO is not easy for businesses, especially small or medium-sized enterprises” especially when “it may be necessary to involve more than one set of expertise, such as expertise in tax compliance, production and procurement” (LSE, 2021). In certain cases, the cost incurred in understanding the RoO may offset benefits derived from preferential tariffs. However, as the next section will indicate, these challenges do not constrain countries altogether from utilising preferences except that exports tend to be concentrated in wholly produced commodities such as sugar, fish and prepared fish products, and spices, among others (LSE, 2021).

Finally, the utilisation of preferences continues to be hindered by standards. In Ethiopia, for instance, it was found that Ethiopia was restrained by the challenges in meeting TBT and SPS requirements to export to the EU. At the same time, these obstacles are further coupled with some of the previously identified challenges, including supply-side constraints such as low levels of industrial development (Development Solutions Europe Limited, 2018). Thus, the complexity of meeting RoO requirements depends on a range of factors including the capabilities of countries and their level of industrial development, the state of logistics and connectivity within the country and with the EU as well as the principal sectors in which a country’s export is predominantly concentrated in.

6 Conclusions

The significance of EU RoO for African manufacturers and exporters when trading with the EU can be substantial. Complying with EU RoO requirements is a prerequisite for securing preferential market access. By enabling preferential market access, EU RoO can hold numerous advantages for African exporters, enabling them to increase and diversify exports. Moreover, by adhering to EU RoO, African exporters benefit from reduced or zero tariffs on their exports, thereby improving the competitiveness of their products in the EU market. As a result, African exporters can better penetrate the EU market and increase their market share in EU Member States. Ambitious RoO that are not restrictive also encourage domestic value addition. Moreover, if EU RoO allows for regional cumulation, as is the case under certain EPAs, it can facilitate regional integration across Africa by allowing exporters to source inputs from the region. This can promote greater interconnectedness in the African market and advance the development of regional value chains.

However, the complexity and administrative challenges associated with RoO have posed considerable challenges for African exporters, particularly for those with limited resources and capacity. Several studies have documented the costs associated with compliance with RoO and how the administrative requirements to be observed can cause significant delays and hassle for exporters. Numerous studies have found that simplifying EU RoO had a positive impact on export growth with more African countries being able to participate under the EBA, for instance. Moreover, strict RoO requirements, especially those that do not allow for regional cumulation make it difficult for African producers to source inputs from other countries within Africa, in turn limiting the potential for intra-African trade and integration.

As Africa aims to advance economic integration on the continent, there are numerous lessons that can be learned from the experience with EU RoO in the development of RoO for the AfCFTA and the RECs. Although the negotiations over the AfCFTA's RoO are almost concluded, one of the key things that should be noted is that it is important for RoO to be simple. The complexity of the EU's RoO has been one of the major challenges for African exporters trading with the EU. As such, to increase intra-regional trade, the AfCFTA and the RECs should both aim to simplify RoO to the extent that their complexity does not act as a deterrence to trade.

Secondly, it is important for African countries to harmonise RoO. The example of Shoprite underscored how exporters face high RoO compliance costs by operating in numerous markets with differing rules and criteria. While EU RoO with African countries are generally similar, there are some variations depending on the EPA in question. This can complicate trade for exporters. As such, one of the key lessons for the AfCFTA and the RECs would be to harmonise existing RoO. The RoO under the various African RECs are diverse and only make trade more complex.

Finally, the complexity of EU RoO and the inability of African countries in meeting such rules also reveal the need for capacity building among African manufacturers and exporters. As intra-

regional trade remains low within Africa despite preferential market access through various RECs, it is important to ensure that African businesses have the necessary capabilities and expertise to meet RoO requirements. In this respect, learning from the experience of the EU RoO, the African Union in the context of the AfCFTA and the various RECs should prioritise capacity-building exercises for African manufacturers and exporters and provide the necessary technical assistance required to help them understand and comply with RoO. A discussion of RoO in the context of the AfCFTA is presented in Annex III.

7 Recommendations

1. Facilitating regional trade through flexible cumulation rules

While the EU GSP schemes allow for cumulation for certain countries, African countries are excluded. As highlighted in earlier sections, the inability to cumulate with other trade partners acts as a significant barrier to trade. For instance, it is estimated that under a scenario with no cumulation, trade is 50% lower than expected, with the impact most notable for trade in intermediate goods (Augier, Gasiorrek, & Lai-Tong, 2005). Likewise, Park and Park's (2011) study of 154 countries shows the strongest trade-creation effect under full cumulation, followed by diagonal cumulation, and an insignificant trade-creation effect for bilateral cumulation (Park & Park, 2011).

Although African countries can cumulate under the EPAs, at present only 14 African countries are Parties to EPAs and this thus excludes most African countries. Moreover, pending the hurdles that have been encountered with EPA negotiations and ratifications, many African countries are unable to source inputs from major economic powerhouses in the region, for instance, Ghana cannot cumulate with Nigeria or Madagascar cannot cumulate with South Africa, which would have facilitated the development of regional value chains. It is therefore recommended that the EU reviews its provisions on cumulation as it pertains to African countries in favour of greater flexibility.

2. Removing RoO for products with “tariff nuisance”

Preventing trade deflection is one of the main rationales for implementing RoO. In a recent study, it was found that trade deflection is not profitable for 86% of bilateral product-level comparisons in FTAs and for 98% in unilateral trade preferences (AGOA, EBA, GSP) (Felbermayr, Teti, & Yalcin, 2019). Trade deflection is thus not a serious concern for the low-income countries in Africa, especially where intra-African transport costs remain the highest across world regions and offset any gains that could have otherwise been derived.

Taking this into consideration, it is recommended for RoO to be dispensed with for products where preferential margins are in the “tariff nuisance” range, i.e., less than 2%.²² Based on this, products that have a tariff of less than 2% will be considered as originating from Africa, regardless of their origin. This will likely boost trade between the EU and African countries, as it will simplify customs procedures and reduce the administrative burden on exporters. It can equally help African countries

²² Tariff nuisances refer to tariffs that are so low that the government incurs greater costs in collecting them than the revenue obtained (WTO, n.d.). In certain countries, such as the United Kingdom has been contemplating removing tariffs that are less than 2.5% while in Australia, it refers to “tariff items that attract a duty of 5 per cent or less; raise less than \$100 000 in revenue a year (in 1996-97); and apply to items where there are few or no local producers” (Australian Government, 2022). Certain goods where ‘nuisance’ tariffs may apply in the EU can potentially include certain raw materials, basic commodities, non-sensitive intermediate goods, among others. A more precise list will require a more in-depth analysis of the EU’s trade flows, trade revenue and collection costs.

to diversify their exports and reduce their dependence on commodities. In practice, the customs authorities in numerous countries are already implementing this policy, as they follow a “risk management” approach. As an example, if a one-off shipment worth \$10,000 with a preferential margin of 1% is calling into the port, customs officers might waive RoO inspection because the administrative costs of inspection outweigh the expected customs revenue and any potential penalties.

3. Apply PSR for a limited range of products (sensitive products)

With the reforms brought to the GSP in 2010, RoO under the EU GSP were simplified. Nonetheless, many PSR continue to be applicable under the schemes as well as under the EPAs. In contrast to Regime Wide Rules, PSR can be more complex and require detailed product-specific knowledge and expertise, increasing the administrative burden on exporters. When PSR rules apply, determining the origin of a product may require detailed documentation, calculations, and verification, which can be expensive and time-consuming, especially for MSMEs with limited resources. Moreover, PSR could potentially result in higher compliance costs as exporters are required to meet different requirements for different products or product categories. This is likely to create barriers to the utilisation of preferential trade agreements or schemes, as exporters may find it challenging to comply with multiple and complex RoO. In a bid to make RoO simpler for LDCs and African exporters, it has been proposed for the EU to phase out PSR and to only apply such criteria for a limited range of products such as those classified as sensitive (Humphrey, 2022). Eliminating PSR where unnecessary would simplify trade procedures, reduce compliance costs, and in turn promote an increase in the utilisation of preferential trade agreements. This could potentially encourage additional African exporters to expand trade with the EU. At the very least, the EU should be encouraged to introduce more flexibility in PSRs, that is give exporters a choice across different PSRs. In newer EU trade agreements, there is greater flexibility between PSR, CTH and sometimes equally an RVC.

4. Re-engineer EPAs in light of the AfCFTA

In another GIZ study, assessing the alignment of tariffs and RoO between EU EPAs and African RECs, Baker (2023) advocates for the harmonisation of RoO under EPAs with those of the AfCFTA. Numerous studies have documented the challenges that arise when exporters must comply with differing RoO under various FTAs. This may act as a deterrence in utilising preferential tariffs, especially if compliance costs exceed any benefits. Hence, to simplify trade with and within Africa, the EU should seek to align the RoO under its EPAs with those of the AfCFTA to the extent possible.

5. Maintain engagement with the private sector, especially manufacturers and exporters

As manufacturers and exporters bear the burden of RoO, it is important for them to be included in the discussions surrounding reforms to RoO. The EU can engage in consultations with exporting firms and manufacturers to gain their insights on the current RoO and identify areas where improvements are required. This can involve holding public consultations, organising workshops and roundtable discussions, and reaching out to industry associations and trade groups.

Moreover, to ease an understanding of the different requirements of RoO, the EU can share information with exporting firms and manufacturers about RoO, how they work, and how they can

be used to take advantage of preferential trade agreements. This can involve publishing guidelines, organising training sessions, and providing online resources. In the same vein, the EU can increase transparency around RoO by publishing detailed information about the criteria used to determine whether a product qualifies for preferential treatment. This can help exporting firms and manufacturers understand the rules and ensure that their products meet the necessary requirements. Given that numerous initiatives are already underway in this regard, for instance, Access2Markets, it is important to ensure that further engagement is generated among relevant stakeholders and that there is sufficient outreach to reach out to those who will benefit from such activities.

African countries can facilitate regular dialogues with trading partners, leveraging technical assistance and support from international developing partners, and taking an active role in RoO negotiations to safeguard their interests. Most EPAs include provisions for the review of RoO following the coming into effect of the Agreements for a couple of years.

6. Industrial policy designs to be aligned to the trade agreements in Africa

It is important for African countries to design their industrial policies in relation to the trade agreements they are party to and prioritise sectors in which they can generate value addition. An important RoO under both the GSP schemes and EPAs relates to value addition whereby the criteria laid out RoO require a certain level of processing or value addition in the exporting country to qualify for preferential treatment. African countries should design their industrial strategies with a view to increasing capacities related to value addition in key sectors, such as manufacturing or processing. Moreover, in the same light, national and regional strategies should aim to develop forward and backward linkages. Where RoO allow for regional cumulation, African countries should promote regional supply chain integration by developing improved economic ties with other countries in the region.

7. Aid for Trade to be used for more vertical integration, easing bilateral trade (for cumulation) and adding value to meet RoO

Given that value addition is an important criterion under EU RoO and is an area where many African countries continue to face difficulties, it would be important to allocate Aid for Trade resources towards promoting vertical integration, easing bilateral trade for cumulation, and creating value addition. This can include ongoing initiatives such as investment in infrastructure or the promotion of productive capacity, but such initiatives should also include value addition and vertical integration as one of their objectives. For instance, by advancing productive capacity, Aid for Trade can allow businesses to source inputs from different countries and thus meet RoO. More directly, Aid for Trade can be used to develop the capacity of exporters and manufacturers in understanding the requirements of RoO. This can include support such as training and education programmes, promoting labour mobility, and the transfer of knowledge and skills.

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Annexes

Annex I. RoO under Different Trading Arrangements

This Annex describes in some detail the complexity of EU's RoO under its different non-reciprocal schemes: GSP, GSP+, EBA and under its different reciprocal EPA schemes (as of early 2023).

RoO under EU's GSP Schemes

The applicable RoO within the framework of the EU's GSP can be divided into the general rules, which apply to all GSP Beneficiaries, and the Product Specific Rules (PSR), which differentiate between EBA Beneficiaries and GSP/GSP+ Beneficiaries.

(i) General rules

As with all origin regimes, the EU GSP's RoO comprises general rules (sometimes called Regime Wide Rules (RWR)) such as wholly obtained, sufficient (or insufficient) working or processing, tolerance (or de minimis), cumulation, and non-alteration.

In order to qualify for originating status, products must either classify as 'wholly obtained' (WO)²³ or 'sufficiently worked or processed from imported materials'. Goods produced from imported materials need to meet the product-specific criteria specified in the Commission Delegated Regulation (EU) 2015/2446. A minimum local value-added of 50% is required for GSP and GSP+ beneficiaries for the majority of industrial products. For textile and clothing, products are required to undergo a double transformation and have at least 30% local value-added. RoO for EBA beneficiaries are considered more facilitating, as these either allow for a higher percentage of non-originating materials or simpler product-specific rules (i.e., single instead of double transformation for textile and apparel).

The rules also include a tolerance threshold that enables producers to use non-originating materials subject to certain conditions (de minimis rule). In the case of agricultural and processed agricultural products (HS2 to HS24), producers can use non-originating material that would otherwise be restricted by product-specific rules where the net weight or value of the product does not surpass 15% of the weight of the product (European Commission, n.d.). However, this tolerance does not apply to products under HS 16.²⁴ For other industrial products, with the exception of textile and clothing, non-originating materials can be used as long as they do not exceed 15% of the ex-works price of the final product. Other specific rules apply to textiles and clothing (HS 50 to 63).

²³ Products are considered as wholly obtained *"by virtue of their nature and absence of imported inputs in the final composition of these products (i.e., plants, vegetables, minerals, fish and the like)"* (UNCTAD, 2022).

²⁴ In order for fishery products to be considered as originating, the country of registration, the flag of the vessel and the ownership of the vessel are all considered when conferring originating status. However, there is no specific requirement on the nationality of the crew or officers.

The EU further allows GSP beneficiaries to consider inputs from other countries as originating content through its provisions on cumulation.²⁵ Cumulation can be undertaken in three different configurations, namely bilaterally, regionally, or through extended cumulation (European Commission, n.d.). As a rule of thumb, cumulation will only apply if processing undertaken in the GSP beneficiary exporting countries goes beyond the minimum operations (i.e., the insufficient working or processing) (see Box 4). With regard to bilateral cumulation, GSP countries can procure materials originating from the EU when manufacturing products and still qualify for originating status.

Box 4. Minimal Operations under the GSP

Minimal operations are considered those processes that are too small and minor to confer originating status to a product. The list of insufficient (or minimal) operations reads as follows:

- a) preserving operations to ensure that the products remain in good condition during transport and storage;
- b) breaking up and assembly of packages;
- c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;
- d) ironing or pressing of textiles and textile articles;
- e) simple painting and polishing operations;
- f) husking and partial or total milling of rice, polishing and glazing of cereals and rice;
- g) operations to colour or flavour sugar or form sugar lumps; partial or total milling of crystal sugar;
- h) peeling, stoning and shelling, of fruits, nuts and vegetables;
- i) sharpening, simple grinding or simple cutting;
- j) sifting, screening, sorting, classifying, grading, matching; (including the making-up of sets of articles);
- k) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;
- l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- m) simple mixing of products, whether or not of different kinds, mixing of sugar with any material;
- n) simple addition of water or dilution or dehydration or denaturation of products;
- o) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts;
- p) slaughter of animals
- q) a combination of two or more of the operations specified in points (a) to (p);"

In general, operations are considered minimal when special skills, machines, apparatus, or tools have not been utilised in manufacturing.

Source: (European Commission, 2016)

Under regional cumulation, GSP beneficiary countries are allowed cumulate with components from other GSP beneficiary countries in the same regional grouping (European Commission, n.d.). As an illustration, Nepal, can source components from Pakistan or Bangladesh (Group II-South Asian GSP

²⁵ Through cumulation, traders of a country can treat non-originating materials imported from or processed in another country as originating in their own country when claiming originating status. Cumulation, under trade agreements, including the GSP, is subject to several conditions.

Beneficiaries) and still obtain originating status. Moreover, upon request to the EU cross-cumulation can be undertaken between Group I and Group III (Box 5). While the EU's GSP arrangements are considered the most liberal globally, certain GSP models include more favourable rules when it comes to cumulation (see Box 6). It is worth noting that bilateral and regional cumulation can be used simultaneously (European Commission, 2016).

Box 5. Regional cumulation groupings under the EU GSP

- (a) Group I: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar/Burma, Philippines, Thailand, Vietnam;²⁶
- (b) Group II: Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, Venezuela;
- (c) Group III: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka;
- (d) Group IV: Argentina, Brazil, Paraguay and Uruguay.

Box 6. Cumulation under other GSP regimes

In the case of the United States, cumulation is allowed for a wider range of regional groupings. In addition to the Andean Group, ASEAN, and the SAARC, the United States equally allows cumulation to take place among members of the West African Economic and Monetary Union (WAEMU), the Southern African Development Community (SADC), and the Caribbean Community (CARICOM).

Under the Australian model, LDCs can also use materials from other developing countries, thus allowing for almost global cumulation. However, a minimum of 50% of the total factory or works costs of the goods must consist of the value of labour and/or materials of one or more developing countries within the least developed country or developing country status scheme, or Australia.

Sources: (Adami, McGarry, & Ugaz, 2011; UNCTAD, 2010; UNCTAD, 2019);

Certain materials can also be excluded from regional cumulation. These rules aim to prevent the use of cumulation in order to benefit from the differentiated preferential treatments among beneficiary countries. Thus, regional cumulation cannot take place when:

- a) the tariff preference applicable in the EU is not similar for all the countries involved in the cumulation; and
- b) the materials concerned would benefit, through cumulation, from a tariff treatment more favourable than the one they would benefit from if directly exported to the Union.

Under certain circumstances, the EU can also allow for extended cumulation, that is, cumulation with other countries with which the EU has a trade agreement (European Commission, n.d.). Extended cumulation is conditional upon a request-and-granting process. The request for extended cumulation from a GSP beneficiary country shall contain a list of the materials concerned by the cumulation. Where the materials concerned change, another request shall be

²⁶ Vietnam is no longer in the EU GSP beneficiary from 1 January 2023.

submitted. GSP beneficiaries can also cumulate with Norway, Switzerland, and Türkiye. Under both cases (cumulation with EU FTA Partners, and with Norway, Switzerland, and Türkiye), agricultural products (HS Chapters 1 to 24) are excluded from extended cumulation.

The origin of the materials used and the documentary proof of origin applicable for extended cumulation shall be determined in accordance with the rules laid down in the relevant free-trade agreement. For example, fabric imported from the Republic of Korea will need to meet the RoO requirements under the EU-Korea FTA. Extended cumulation will also need to comply with the minimum operation requirement.

Furthermore, in certain circumstances, special derogations may be granted that allow for an even more relaxed RoO. These special derogations are typically conferred to specific countries and specific products. Cape Verde is among the countries to have benefited from special derogations. For example, the EU conferred originating status to certain fishery products processed in Cape Verde that utilised non-originating fish (European Commission, 2011).

The current GSP Regulations are expected to expire by the end of 2023 and new rules will apply from January 2024 for a period of 10 years. While the EU will maintain the principal features of the current arrangement, it is expected that the regulations will be further strengthened, especially when it comes to the respect of human rights, the protection of the environment and more generally better monitoring of the scheme (European Commission, n.d.). Some of the proposals that have been made so far by the European Commission include improving accessibility to the GSP+ arrangement for LDCs graduating from the EBA and introducing new processes so that the cumulation of RoO aligns with the development, financing, and trade needs of countries (European Council, 2022).

(ii) Product specific rules

Product-specific rules give LDCs a margin over developing beneficiary countries under the EU's GSP regimes. While the rules of origins under the Commission Delegated Regulation (EU) 2015/2446 (as amended) apply across all GSP beneficiaries, there are less stringent rules for the EBA beneficiary countries.

More facilitating product-specific rules are provided for certain products of the chemical or allied industries (HS chapters 28, 29, 31, 32, 33, 35, 36, 37, 38), plastics (HS 39), textiles and garment (HS 50, 51, 52, 53, 54, 55, 56, 58, 59, 61, 62, 63), ceramic products (HS 69), machinery and electrical equipment (HS 84, 85), vehicles and transport equipment (HS 87), and optical instruments (HS 90).

Table 9. Product-specific RoO under EU GSP schemes

Product HS code	RoO for LDCs	RoO for other GSP beneficiaries
Chemicals and allied industries (HS 28, 29, 31, 32, 33, 35, 36, 37, 38) Plastics (HS 39)	CTH/ CTSH with value-limit or specific processing or	CTH/ CTSH with value-limit or specific processing or

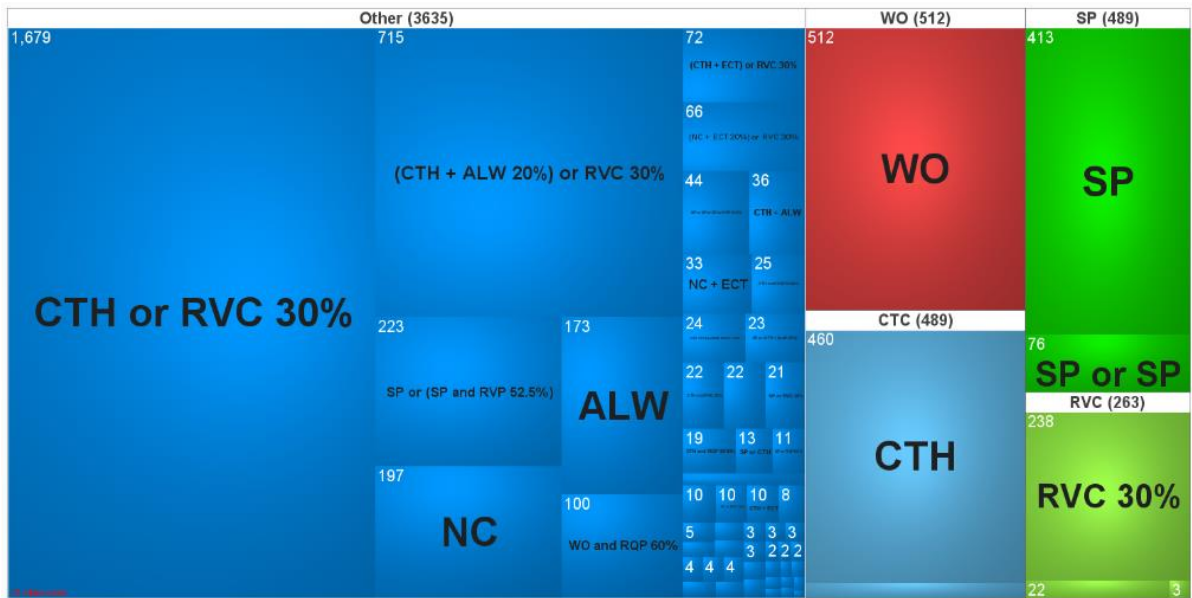
Product HS code	RoO for LDCs	RoO for other GSP beneficiaries
Ceramic products (HS 69)	Non-originating materials does not exceed 70% of ex-works price	Non-originating materials does not exceed 50% of ex-works price
Textiles (HS 50, 51, 52, 53, 54, 55, 56, 58, 59)	Single transformation (Weaving) or specific processing with value-limit of materials not exceeding 47.5%	Double transformation or specific processing with value-limit of materials not exceeding 47.5%
Garment (HS 61, 62, 63)	Single transformation (Manufacture from fabric)	Double transformation or specific processing with value-limit of materials not exceeding specific threshold
Machinery and electrical equipment (HS 84, 85) Vehicles and transport equipment (HS 87) Optical instruments (HS 90)	CTH or Non-originating materials does not exceed 70% of ex-works price	CTH or Non-originating materials does not exceed 50% of ex-works price

Source: IEC compilation

For example, for certain textile products under Chapter 62, the rules only require single transformation from LDCs (e.g., only making of a garment from fabric), while other beneficiary countries are required to perform double transformation (e.g., weaving accompanied by making-up, including cutting) or specific processing together with the value-limit criterion (e.g., manufacture from unembroidered fabric, provided that the value of the unembroidered fabric used does not exceed 40% of the ex-works price of the product). For other industrial products, the threshold for non-originating materials used in the manufacture of the products for LDCs is 70%, compared to that of 50% for other beneficiary countries.

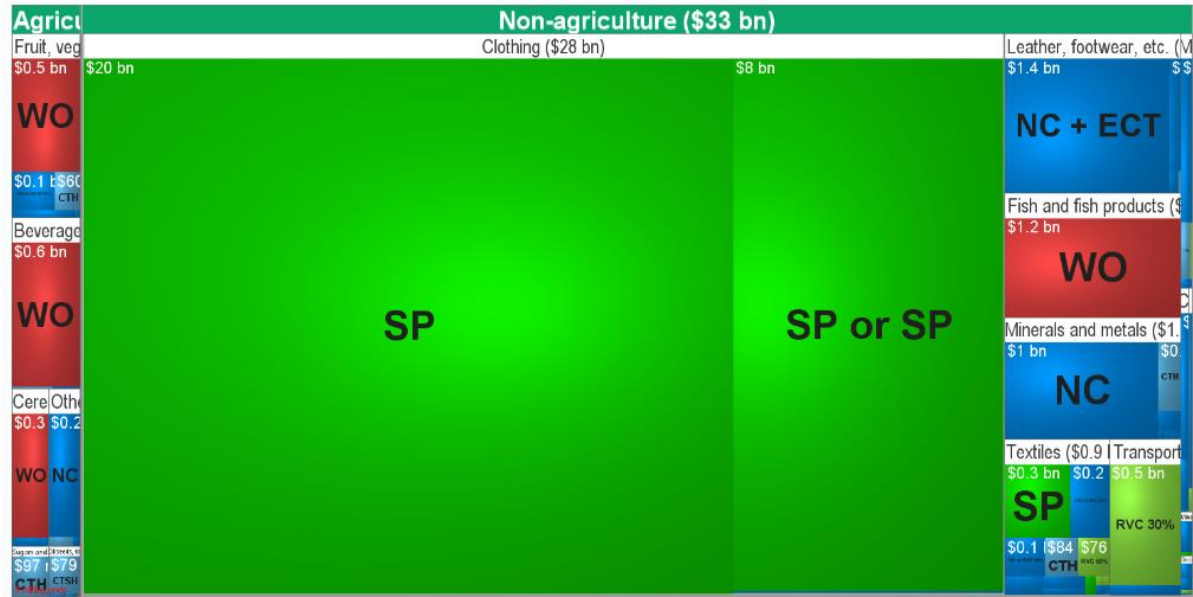
The majority of products under the EBA require either a CTH or an RVC of 30%. This rule applies to around 1679 products. In addition, 460 products require only a CTH while another 263 require only an RVC of 30%. Other rules that apply under the EBA include WO for 512 products, SP for 489 products, NC for 197 products and ALW for 173 products. The remaining product-specific rules comprise predominantly a combination of different rules. Agricultural products need to be either WO or for some products, a CTH applies. For clothing, which constitutes one of the largest exports under the EBA, SP applies.

Figure 13. Origin criteria under the EBA across all HS6 codes



Source: ITC-WCO-WTO Rules of Origin Facilitator (2023)

Figure 14. Origin criteria applied under the EBA on eligible imports (by sector)



Source: ITC-WCO-WTO Rules of Origin Facilitator (2023)

RoO under EU's EPAs

Under the framework of the Cotonou Agreement, ACP countries entered into negotiations with the EU for EPAs. The primary objective of the Cotonou Agreement was to advance development in ACP countries and enable them to better integrate the global economy (European Council, 2022). The EPAs, therefore, have a strong foundation in sustainable development, development cooperation

and human rights (European Commission, n.d.). As of January 2023, the EU is a Party to seven EPAs, regrouping thirty-two out of seventy-nine ACP countries. Out of these, 14 African countries have an EPA or provisional EPA in force (European Commission, n.d.).

Table 10. Countries in an EPA with the EU

Regions	Participating Countries
Central Africa	Cameroon
Eastern and Southern Africa (ESA)	Comoros, Madagascar, Mauritius, Seychelles and Zimbabwe
Southern African Development Community (SADC)	Botswana, Eswatini, Lesotho, Mozambique, Namibia, South Africa
West Africa	Côte d'Ivoire and Ghana
Caribbean	Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Jamaica, St. Lucia, St. Vincent, St. Kitts and Nevis, Suriname, Trinidad and Tobago
Pacific	Fiji, Papua New Guinea, Samoa and the Solomon Islands

Source: (European Commission, n.d.)

In the African context, the approach adopted by the EU was to negotiate the EPAs on the basis of different regional groupings. African Regional Economic Communities (RECs) were, however, not able to build stable negotiation groups. Currently, only the EU-SADC EPA has been finalised. Despite its name, only a subset of the SADC – the Southern African Customs Union (SACU) Member States – are signatories of the EU-SADC EPA. The EU-SADC EPA, therefore, excludes numerous SADC member states, many of which have opted to undertake negotiations with the EU under the ESA configuration instead.

Other African regions have not yet finalised their respective EPAs. With regard to the EAC, Kenya and Rwanda signed the EAC-EU EPA in 2016. Pending the signature of other EAC Members, Kenya and Rwanda are engaging with the EU bilaterally based on the principle of variable geometry which enables EAC Member States to participate in integration initiatives at varying paces (Kamanga & Possi, 2017). In the case of ECOWAS, pending the signature of all of its Member States, Côte d'Ivoire and Ghana have opted for country-level EPAs.

Unlike the GSP arrangements, the EPAs are reciprocal but asymmetric. The EPAs remain asymmetric in favour of the ACP countries. The EU opens its market fully and immediately, while ACP countries have up to 15 years before they open their markets (European Commission, n.d.). Moreover, ACP countries can also exclude sensitive sectors from the list of products being liberalised under the EPAs. The EPAs also include provisions on special safeguards measures that protect infant industries or protect the domestic economy from import surges, among others.

Under the EPAs, the tolerance rule is also more lenient than regular tolerances allowed generally. Similar to the GSP arrangements, the tolerance allowed under the EPAs is up to 15% in the ex-work price of the final product in contrast to the 10% tolerance rate that usually applies in the majority of the EU's other trade agreements (European Commission, n.d.).

The EPAs also promote cumulation between countries. In the first instance, the EPAs allow countries to claim preferential origin status through bilateral cumulation with the EU. Diagonal

cumulation and full cumulation are also permitted with Overseas Countries and Territories (OCTs) associated with the EU and other ACP countries. There exist certain variations in the modalities for cumulation under different EPAs. In certain cases, the EPAs may also allow for cumulation with other neighbouring countries. However, EPA countries must make a request to the EU for such cumulation to be applied.

Box 7. Cumulation under the EU-ESA EPA

Cumulation in the Community

As per Article 3 of Protocol I of the EU-ESA EPA, the ESA countries still qualify for originating status if they obtain materials from another ESA state, ACP country or countries in the OCTs. However, it is important for any product to have undergone processing or work that goes beyond minimal operation. Cumulation, under this configuration, is only allowed following certain conditions:

- i. the countries involved must have concluded an agreement on administrative cooperation;
- ii. materials and products have acquired originating status by the application of the same RoO as stipulated under the Protocol; and
- iii. the Community will provide the ESA States, through the European Commission, with details of agreements on administrative cooperation with other countries or territories.

Cumulation with neighbouring developing countries

Materials that originate in a neighbouring developing country, other than an ACP State, can be considered as originating when incorporated into a product from an ESA state. In the ESA, Algeria, Egypt, Libya, Morocco, Tunisia, and the Maldives are considered neighbouring developing countries. Similar to the conditions for the ESA community cumulation, the ESA States, the Community and the neighbouring developing countries concerned must conclude an agreement on adequate administrative cooperation procedures. Not all products can obtain originating status under this configuration.

Source: (Official Journal of the European Union, 2012)

In addition, the EPAs may also include certain provisions granting special derogations (European Commission, n.d.). The derogations are granted with regard to certain specific product rules. In the case of the ESA and Pacific EPAs, a special derogation was granted with regard to canned tuna. Madagascar, Mauritius, and Seychelles were granted a special derogation allowing them to manufacture preserved tuna and tuna loins (HS 1604) from certain non-originating tuna (HS 0302 or HS 0303) while still being able to claim originating status (Official Journal of the European Union, 2012). This derogation applied to 8,000 tonnes of canned tunas and 2,000 tonnes of tuna loins that were imported into the EU from 1st January 2013 to 31st December 2022. Other countries also benefit from certain other derogations. For instance, under the EU-CARIFORUM EPA, the Dominican Republic has a special derogation pertaining to rules on garments (European Commission, n.d.).

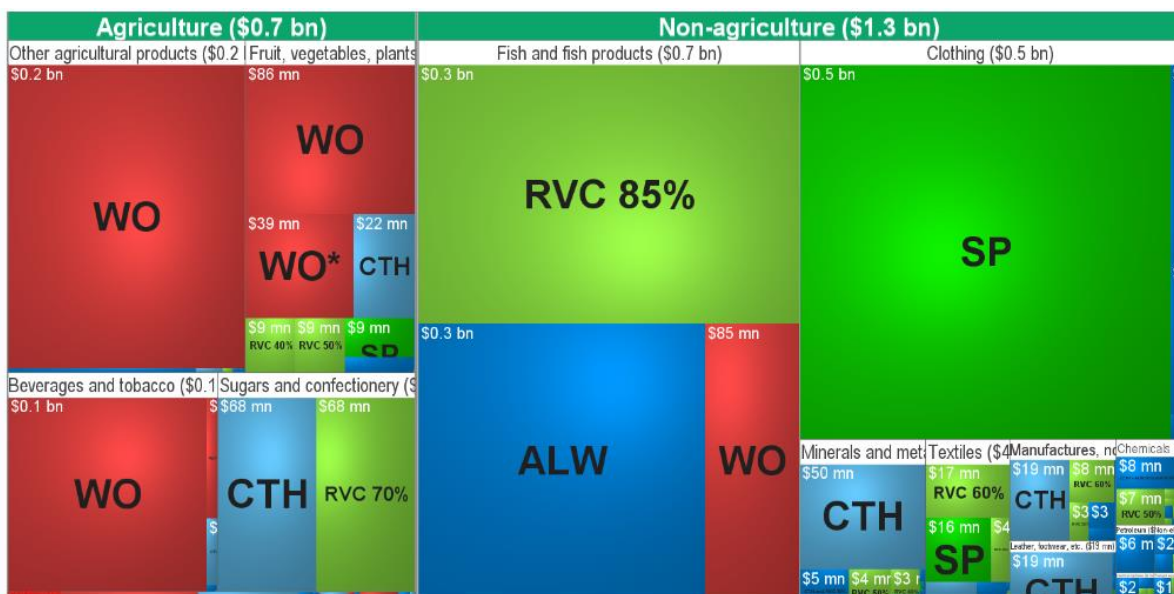
Under the EU-ESA EPA, numerous types of rules apply. The majority of products, 1024 in all, are subject to CTH, while for the other 858 products, an RVC of 60% is required. Product-specific rules apply for 604 products, while WO for 577 products, and ALW for 211 products. With regard to eligible exports to the EU, most agricultural products from ESA countries have the WO rule, although for certain product lines other rules apply such as CTH or specific RVC %ages. For clothing and textiles, SP or CTH apply. Figure 15 and Figure 16 highlight the various RoOs applicable under the Agreement. For the most part, there are significant similarities between the RoOs applicable under other EPAs.

Figure 15. RoO in EPA, ESA-EU across all HS6 codes



Source: ITC-WCO-WTO Rules of Origin Facilitator (2023)

Figure 16. RoO in EPA, ESA-EU applied by sector and eligible exports



Source: ITC-WCO-WTO Rules of Origin Facilitator (2023)

Annex II. Deciphering Rules of Origin across Preferential Trade Agreements

This Annex justifies the choice of database for RoO tallied in this report. The Annex also describes the steps taken to translate texts into the two categories of RoO, RWRs and PSRs, then to metrics used to compare the RoO across PTAs.

Currently, there are two databases with wide coverage on RoO:

- The World Bank's Deep Trade Agreement (DTA) database covers 184 reciprocal FTAs. This database is publicly available and downloadable with the RoO entered in binary (Yes, No) format. However, the DTA does not cover non-reciprocal PTAs like AGOA, EBA and GSP, which are of interest to LDCs and hence to this report.
- The ITC-WTO-WCO [Rules of Origin Facilitator](#) (ROF). It is the most extensive database on RoO, covering 378 PTAs. This database provides details on the options for an exporter at the HS6 level (the options for each preferential regime the country belongs to and details about some raw information on origin requirements). The texts can be consulted but there is no codification of texts into specific RoO.²⁷

Both databases cover two types of RoO

- (i) Regime wide Rules (RWRs) that apply to all products, and
- (ii) Product Specific Rules (PSRs) entered at the HS6 level. These PSRs are specific to the product included in the PTA.

This report is based on the ROF because EU RoO applying to African countries (mostly LDCs) are non-reciprocal.²⁸ This Annex summarises the information in the ROF and explains three metrics to describe these RoO: (i) text overlap analysis; (ii) regulatory distance; (iii) an index of restrictiveness for PSRs, the 'R-index' needed to understand some of the results in the main text. Given the difficulties in interpreting succinctly the forest of PSRs, these indices are arguably the best succinct approximate measures to compare compliance costs across PTAs.²⁹

This Annex illustrates these measures for six PTAs: the Association of Southeast Asian Nations (ASEAN), South Asian Free Trade Area (SAFTA), Southern Common Market (MERCOSUR), Southern African Development Community (SADC), EUROMED and North American Free Trade Agreement (NAFTA) a selection that covers the three large families of RoO (ASEAN, NAFTA, EUROMED) identified in WCO (2017) augmented by geographical coverage. SADC is chosen because, compared with most other African RECS, it is relatively close to EUROMED rules (60% of the PSRs in SADC are close to those in PEM –see Table 15 PSR similarity of 6 PTAs Table 15).

²⁷ See (<https://mag.wcoomd.org/magazine/wco-news-87/rules-of-origin-facilitator/>) for how to navigate the data base.

²⁸ All LDCs have access to EBA, and many to the EPAs, both more favourable than GSP or GSP+ preferences.

²⁹ Gourdon et al. (2020, section 2.3) presents the 3 measures. Inama (2020) gives an exhaustive description of ROO around the world and UNCTAD (2019) gives a comparative description of ROO across African RECs.

1 Comparing Regime-wide (RW) origin requirements.

RW requirements fall under two categories: origin and certification (see Table 13). To bring focus, Gourdon et al. (2021b) further distinguish these measures by classifying them along two dimensions:

- transparency
- flexibility

Transparency provisions reduce information costs providing businesses with some certainty about the requirements. Likewise, flexibility provisions make RoO less restrictive. In the case of origin provisions, flexibility criteria reduce the production adjustment cost (direct cost of compliance). In the case of certification provisions, flexibility reduces certification costs.

Table 11 (origin) and Table 12 (certification) display the specifics of RWRs across the 6 PTAs. Differences are substantial, a headache for any negotiators that would engage in harmonisation across PTAs (but also for those currently negotiating on harmonisation for NPRO since many RWRs are the same for NPROs and PProOs).

The measure on regulatory distance across RECs shows that the regulatory distance of the agreed upon RWRs for AfCFTA with SADC is not among the closest five. On practical grounds, the prospects for AfCFTA members to adopt PEM RWRs, do not seem promising. Of the two measures where the overlap is observed, text overlap is the simplest in terms of attribution of meaning about content since it only identifies strings of words. By design the PTAs are chosen because of their differences so there is very little textual overlap among the 6 PTAs. Textual overlap measures are not reported.³⁰ The second measure, Regulatory Distance (RD), attributes differences in RoO to whether a count of the selected criterion (e.g. presence or not of a regional value content or a duty drawback) is an adequate approximation of the different characteristics. Regulatory distance for any measure is nil (score of 1) between two countries if both have (do not have) that measure.

³⁰ The highest overlap (SAFTA-ASEAN) is 9% whereas Gourdon et al. (2020) report textual similarity in the range 3% (SADC-ECOWAS) and 42% (SADC-AGADIR).

Table 11 Regime-wide rules across a selection of PTAs: Provisions on Origin

Criterion	SADC	SAFTA	ASEAN	MERCOSUR	PEM	NAFTA	Frequency in 378 PTAs
Provisions on Origin Process (measures for transparency)							
1: Wholly obtained products	YES	YES	YES	YES	YES	YES	80%
2: Non-qualifying operations	YES	YES	YES	YES	YES	YES	75%
3: Accessories, Parts, Tools	YES	NO	YES	NO	YES	YES	74%
4: Packaging	YES	YES	YES	NO	YES	YES	78%
5: Sets (RVC)	YES RVC 85%	NO	NO	NO	YES RVC 85%	NO	55%
Measures relaxing provisions on process (measures for flexibility)							
6: Roll-up (absorption)	YES	NO	NO	NO	YES	YES	49%
7: Indirect materials	YES	YES	YES	NO	YES	YES	75%
8: Fungible materials	Material only	NO	Material only	NO	Material only	Material and final	58%
9: Principle of Territoriality	YES	NO	NO	YES	YES	YES	67%
10: De Minimis (tolerance)	YES (15%)	NO	YES (10%)	NO	YES (10%)	YES (7%)	65%
11: Value-added calculation	Import Content	Import Content	Build down/ up	Import Content	Import Content	Build down/ net cost	88%
12: Outward processing	NO	NO	NO	NO	YES	NO	25%
13: Cumulation	diagonal	diagonal	Diagonal	diagonal/full	cross	diagonal/full	90%
14: Direct transport	YES	YES	YES	YES	YES	YES	91%
15: Exhibitions	NO	YES	YES	NO	YES	NO	37%
16: Duty drawback	nm	nm	Allowed	Nm	Prohibited	Prohibited	17%

Note: Yes in Principle of territoriality (9) and Direct transport (14) imply higher restrictiveness. ASEAN is the only PTA that does not apply the principle of territoriality

RVC: Regional Value Content. Nm: not mentioned.

Source: Gourdon et al. (2021b)

Table 12 Regime wide rules across a selection of PTAs: Certification provisions

	SADC	SAFTA	ASEAN	MERCOSUR	PEM	NAFTA	Frequency in 378 PTAs
Provisions on Certification Process (measures for transparency)							
1: Verifications	YES	YES indirect	YES combined	YES indirect	YES indirect	YES direct	89%
2: Competent authority	NO	NO	NO	YES	NO	NO	45%
3: Supporting documents	NO	YES	YES	NO	YES		46%
4: Advance rulings	NO	NO	YES	NO	NO	YES	37%
5: Retention period	5 years	2 years	3 years	2 years	3 years	5 years	78%
6: Penalties	YES	YES	YES	YES	YES	YES	72%
7: Appeals	NO	NO	YES	NO	YES	YES	51%
Flexibility to Certification Provisions							
8: Certification exemption	NO	NO	NO	NO	YES <500 eur	YES <1000\$	63%
9: Period of validity	NO	12 mos	NO	12 mos,	4 mos.	4 years	79%
10: Refund of excess duties	NO	YES 45 days	NO	NO	YES	YES 1 year	64%
11: Minor errors	NO	YES	NO	YES	YES	NO	51%
12: Approved exporter	NO	NO	NO	NO	YES	NO	30%
13: Certification	Authorized body	Authorized body	Authorized body	Authorized body	Self <6000 eur	Self	95%
14: Third party invoicing	NO	NO	NO	NO	NO	NO	34%

Source: Gourdon et al. 2021b

Table 13 Similarity of RWR rules for 6 PTAs (RD measure)

	ASEAN	PEM	MERCOSUR	NAFTA	SAFTA	SADC
ASEAN		53%	37%	47%	63%	47%
PEM			30%	50%	47%	43%
MERCOSUR				37%	67%	50%
NAFTA					40%	53%
SAFTA						60%

Notes: RD: Regulatory Distance. RD values are in the 0-1 range. A value closer to one means that the countries are more similar in their RW patterns.

Source: Gourdon et al. (2021b)

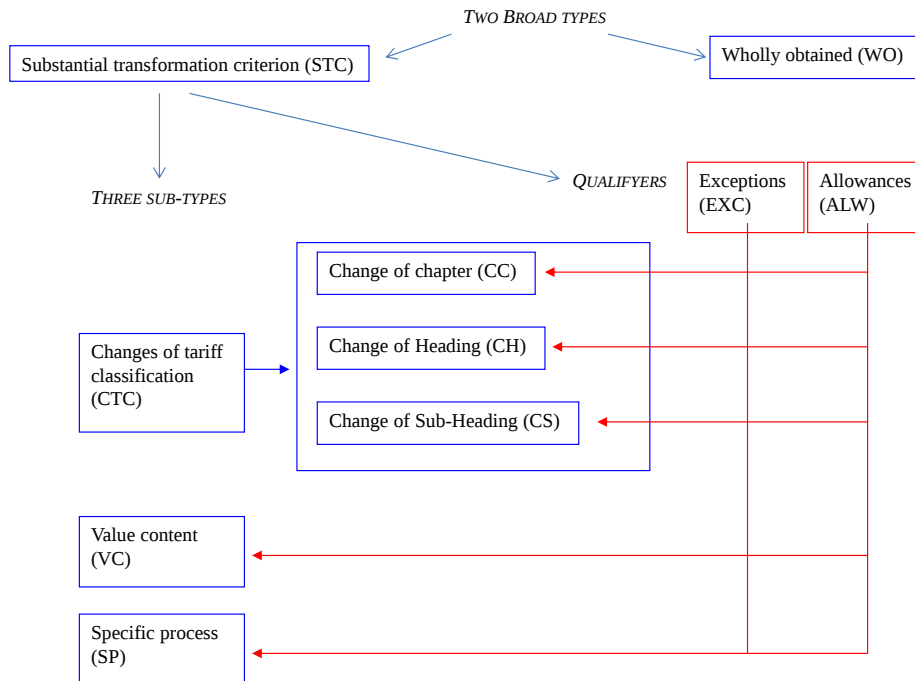
Table 13 shows high similarity values for SAFTA-ASEAN (63%) and MERCOSUR-SAFTA (67%) but low similarity for MERCOSUR-ASEAN (37%). If one takes ASEAN as the PTA with the friendliest RW criteria to encourage intra-regional trade, then SADC and NAFTA are the furthest away from ASEAN.

2. *Mapping Product-Specific Rules (PSR) across PTAs*

When it comes to PSRs, the devil is in the details, particularly regarding any comparisons of PSRs. In the forest, each ‘tree’ is different. Since the WTO Agreement on Rules of Origin does not prescribe specific criteria for RoO and origin procedures, PTA members are free to negotiate preferential RoOs without any legal constraints. These PSRs specify criteria at the HS4-digit or even at the HS6-digit level.

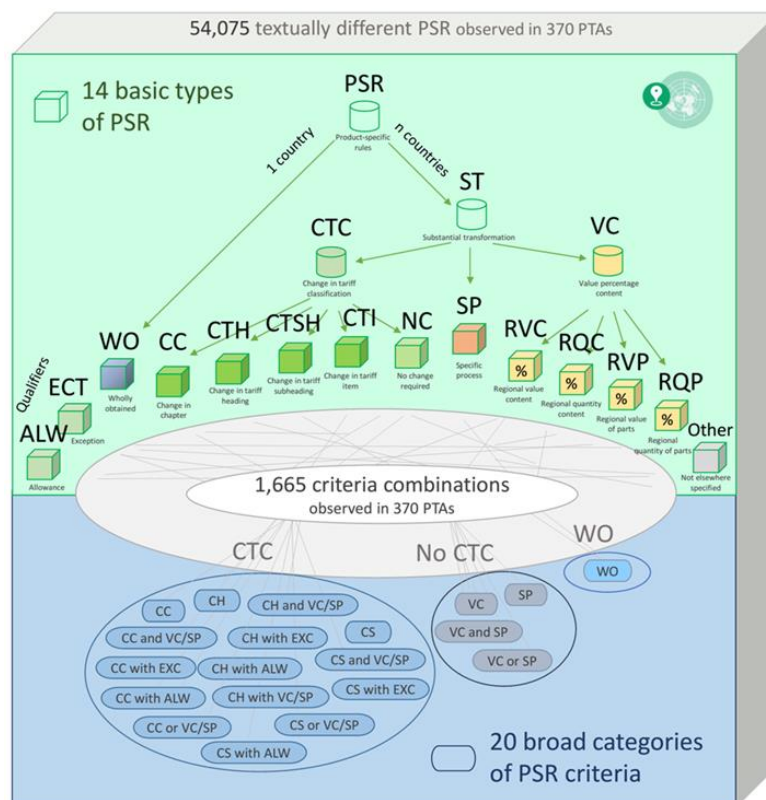
Figure 17 decomposes PSRs into two categories, WO and ST, where the ST criterion specifies that the country of origin is the country where the last transformation took place. The criterion could be: (i) a Change of Tariff Classification (CTC) (i.e. the exported good must have a different tariff classification than that of any imported inputs); (ii) a Specific Process (SP) of production (e.g. the exported good must have undergone a chemical reaction); (iii) a Value Content (VC) requirement (i.e. a minimum threshold of local value content). The three different criteria, along with qualifiers--themselves classified into exceptions (EXC) and Allowances (ALW)-- are used to meet the ST criterion. Qualifiers can come with each criterion. In some cases, exporters have a choice among the criteria (‘either/or’) and in others, the qualifiers have to be met (‘and’).

Figure 17 Categories of Product-Specific Rules (PSRs) to meet the origin criterion



2

Figure 18 Collapsing PSRs into 20 categories



Sources: Gourdon et al. (2020) and Gourdon et al. (2021)

Figure 17 shows the 14 basic types from the coding of each PSR (which involves extracting the legal texts and processing them through an algorithm to match semantics with key attributes). In the ROF database, the result is 1665 standardized ‘universal criteria’ where each origin criterion consists of one or more building blocs (such as WO, CTH).

Three observation rules are then used (and vs. or rules; no distinction among VC rules with differences in allowable non-originating materials and grouping in the same category the combination of a CTC with an SP or with a VC rule) to obtain the 20 categories in the bottom of Figure 18.³¹

Table 14 Distribution of the 20 PSRs across PTAs (HS 6 level)

Label	Abbreviation	SDC	SFT	ASN	PEM	MER	NFT
(1) Change in Tariff Classification (CTC)	CTC	53.6	100	92.6	55.0	77.5	99.9
1 Change in Chapter	CC						29.9
2 Change in Chapter and Value content/Specific Process	CC and VC/SP						5.8
3 Change in Chapter with Exceptions	CC with EXC						17.2
4 Change in Chapter with Allowances	CC with ALW						0.3
5 Change in Chapter or Value content /Specific Process	CC or VC/SP			18.4			0.1
6 Change in Heading	CH	27.5			20.1		16.7
7 Change in Heading and Value content/Specific Process	CH and VC/SP	0.7	100		2.1	10.0	4.5
8 Change in Heading with Exceptions	CH with EXC	2.9			0.9		17.2
9 Change in Heading with Allowances	CH with ALW	0.1			1.7		0.1
10 Change in Heading or Value content/Specific Process	CH or VC/SP	19.1		59.4	23.1	67.4	1.9
11 Change in Sub-heading	CS	3.4			3.2	0.1	3.2
12 Change in Sub-heading and Value content/Specific Process	CH and VC/SP						0.5
13 Change in Sub-heading with Exceptions	CS with EXC						2.2
14 Change in Sub-heading with Allowances	CS with ALW						0.1
15 Change in Sub-heading or Value content/Specific Process	CS or VC/SP	0.0		14.9	2.6		0.4
(2) No Change in Tariff Classification(NO-CTC)	NO CTC	38.1	0	3.3	34.9	22.5	0
16 Value Content	VC	18.8		3.0	16.5	11.6	
17 Specific Process	SP	13.3		0.3	17.0	10.9	
18 Value Content and Specific Process	VC and SP	0.4			0.8		
19 Value Content or Specific Process	VC or SP	5.6			0.6		
(3) Wholly Obtained (WO)	WO	8.4	0	4.1	10.1	0	0.1
20 Wholly Obtained	WO	8.4		4.1	10.1		0.1

Notes: Abbreviations: ASN (ASEAN) – NFT (NAFTA) – MER (MERCOSUR) – PEM (PEM) – SDC (SADC) – SFT (SAFTA)

Source: Gourdon et al. (2020)

Table 15 shows the distribution of the 14 types across the 6 PTAs. Note that the percentages of CTC PSRs are close for SADC and PEM. This is also reflected in the high similarity score of 60% for PEM-SADC which reflects their inspiration from the EU model. For the other pairwise scores, like MERCOSUR and ASEAN, the score reflects a large number of “CTH or VC” rules.

Table 15 PSR similarity of 6 PTAs

	ASEAN	PEM	MERCOSUR	NAFTA	SAFTA	SADC
ASEAN		22%	40%	1%	0%	23%

³¹ Gourdon et al. (2020 annex 5.2) gives the key to aggregating the building blocs into the 14 groups in figure 2b.

PEM			16%	2%	3%	60%
MERCOSUR				1%	11%	22%
NAFTA					4%	4%
SAFTA						1%
SADC						

Source: Gourdon et al. (2020, table 9)

In conclusion, together with the comparisons reported, the AfCFTA's similarity score is highest with SADC, itself closely related to the landscape of PEMs PSRs.

3. *Constructing a restrictiveness index (RI) for PSRs.*

Estevadeordal (1999) introduced a restrictiveness index, the 'R-index' to proxy for the difficulty of meeting origin requirements across PSRs in NAFTA. His synthetic index was based on an observation rule (i.e. 'no cheating'). His ordinal index, R_i , computed at the tariff line level, ranged from 1 (least restrictive) to 7 (most restrictive). The index is ordinal so a value of $R_i=4$, cannot be interpreted as twice as restrictive as a value of $R_i=2$.

The observation rule is as follows. Let ΔCC stand for a change of chapter, ΔCH for a change of heading, ΔCS for a change of subheading, and ΔCI for a change of item. A change of classification at the item level can be taken as less stringent than one at the subheading level, and so forth. So the criterion for classifying changes in tariff classification criteria is

$$\Delta CC > \Delta CH > \Delta CS > \Delta CI. \quad (1)$$

But a change of tariff classification is often accompanied by one or two (in a few cases even three) additional requirements, such as value content rules, technical requirements, exceptions, or allowances. The observation rule then assigns higher index values to changes in tariff classification when these requirements are added and lower ones in the case of allowances. For instance, a change of heading is given an index value of 4, which rises to a 5 when accompanied by a technical requirement or exception but shrinks to a 3 when accompanied by an allowance.³²

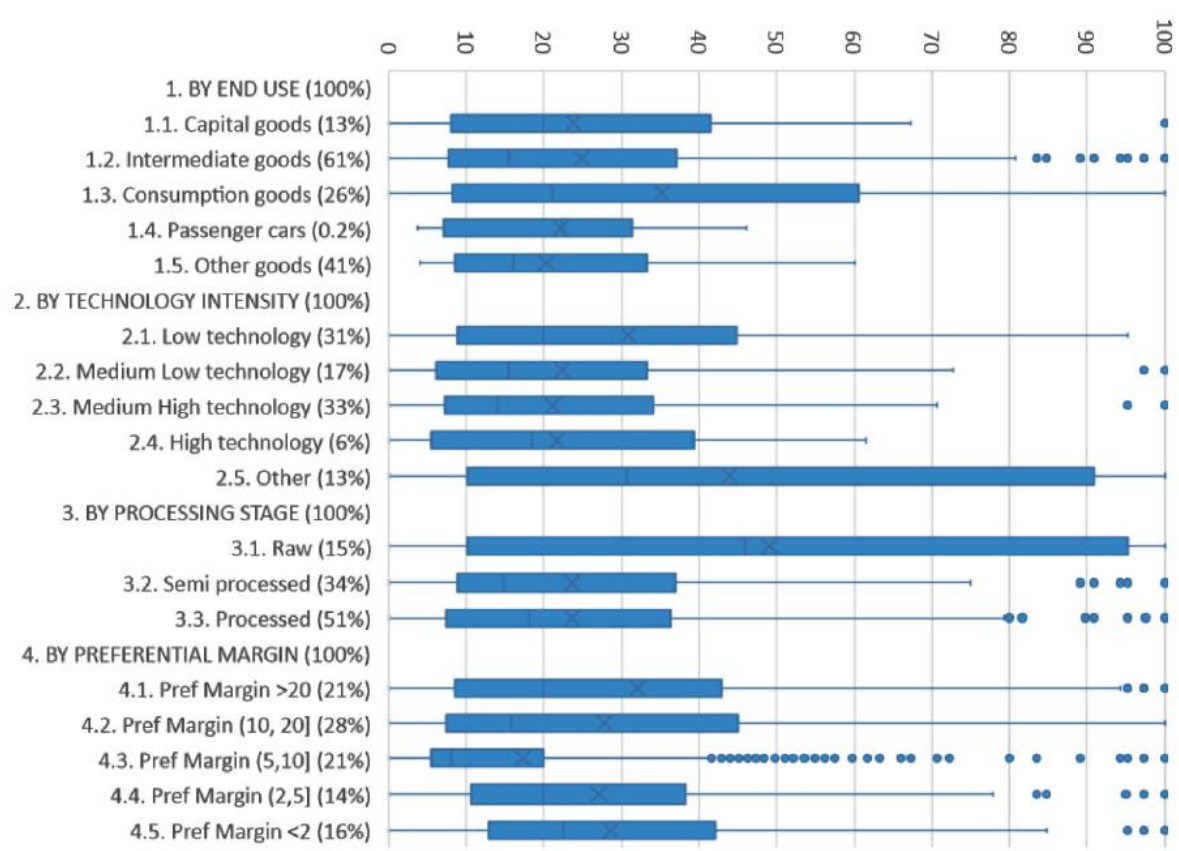
Though not amenable to quantification as effective rates of protection, the R-index plays the same analytical role: it is intended as an overall indicator of how trade-inhibiting the requirements that must be met by a product to obtain originating status are. This index has been used many times in cross-country estimates of PURs at fairly disaggregated levels (usually HS4) invariably returning negative coefficients of PURs, once controlled for preferential margins (always positively associated with PURs).

Figure 19 summarises the distribution of these R-index values by product types (capital goods, intermediate goods, consumption goods), processing stage, technology intensity and by preferential margin. For all categories, the interquartile is large, as one would expect if RoO with average restrictiveness is higher for consumption goods and lower for intermediates and capital goods. This is what would be expected if RoO are used as a development tool and production capabilities are low for these goods. The classification by preferential margin displays the expected pattern of higher R-values for sectors with high preferential margins. This suggests that PSRs are also tailor-made. Gourdon et al. suggest that while the preferential

³² See Cadot et al. (2006, appendix) for details on the construction of an R-index inspired from Estevadeordal

margin is computed on applied rather than bound tariffs, negotiators might want to agree on doing away with origin requirements for the 16% of goods with a preferential margin of less than 2%.

Figure 19 Distribution of restrictiveness scores across African RECs



Notes: Computed from 5867 HS products. The shaded area is the interquartile range. The bar indicates the median and the X the mean.

Source: Gourdon et al. 2020b

Annex III. The emerging landscape of RoO in the AfCFTA. ³³

This Annex describes the measures used to compare RoO across the 7 RECs engaged in negotiations to conclude the needed harmonization of RoO to arrive at a set of common continental RoO. Negotiations are stuck for sectors with high preferential margins which are those with the greatest potential for increased intra-African trade. The analysis suggests that it is likely that the PSRs to be agreed on for the remaining PSRs under negotiation will be fairly restrictive, at least according to the R-index measure.

To become fully operational in terms of reducing tariff barriers, AfCFTA signatories must submit their tariff concessions to the African Union. Signatories must also harmonise RoO across Africa's PTAs to arrive at a common set of continental RoO.

The following example illustrates the benefits of pan-continental RoO. Under the AfCFTA, an exporter of men's shirts (HS 6205) from Kenya to Nigeria (a member of ECOWAS, the Economic Community of West African States) will be subject to the same origin requirement as if it exports that same shirt to South Africa (a member of SADC, the South Africa Development Cooperation). In other words, countries in ECOWAS and SADC will have to apply the same origin requirement for Kenyan shirts.

Signatories are tasked with the obligation to harmonise RoO across RECs to arrive at a common set of continental RoO.³⁴ Negotiators have to negotiate over 850 different PSRs across the continent. The AfCFTA requires that member states build on the "acquis" of the RECs while considering the latter as building blocs. This raises concerns about the implementation of AfCFTA RoO within existing rules where there might be conflicts. This Annex describes progress so far. Metrics (text overlap and regulatory distance) are used to describe the emerging landscape of RoO. The measures also help visualise difficulties faced by negotiators.

The information helps address the following questions:

- How RoO affect the structure of regional supply chains across Africa
- How RoO affect sourcing decisions (regional or international) of African exporters

To satisfy the nationality requirement, a product must meet both the RWRs and PSRs criteria. Only when both are satisfied, does the product acquire preferential status. Preferential margins are large across sectors in all RECs, an indication of potentially large increases in intra-African trade provided that compliance costs with the associated RoO are low.

What is at stake: Preferential margins across the RECs

As shown in the main text, it is only in the interest of exporters to request preferential status if the preferential margin (usually equal to the applied tariff MFN rate) exceeds the costs of compliance with the RoO. The evidence surveyed in the main text suggests that administrative costs could equal 2-4% of the value of the shipment. Below table 1 shows the

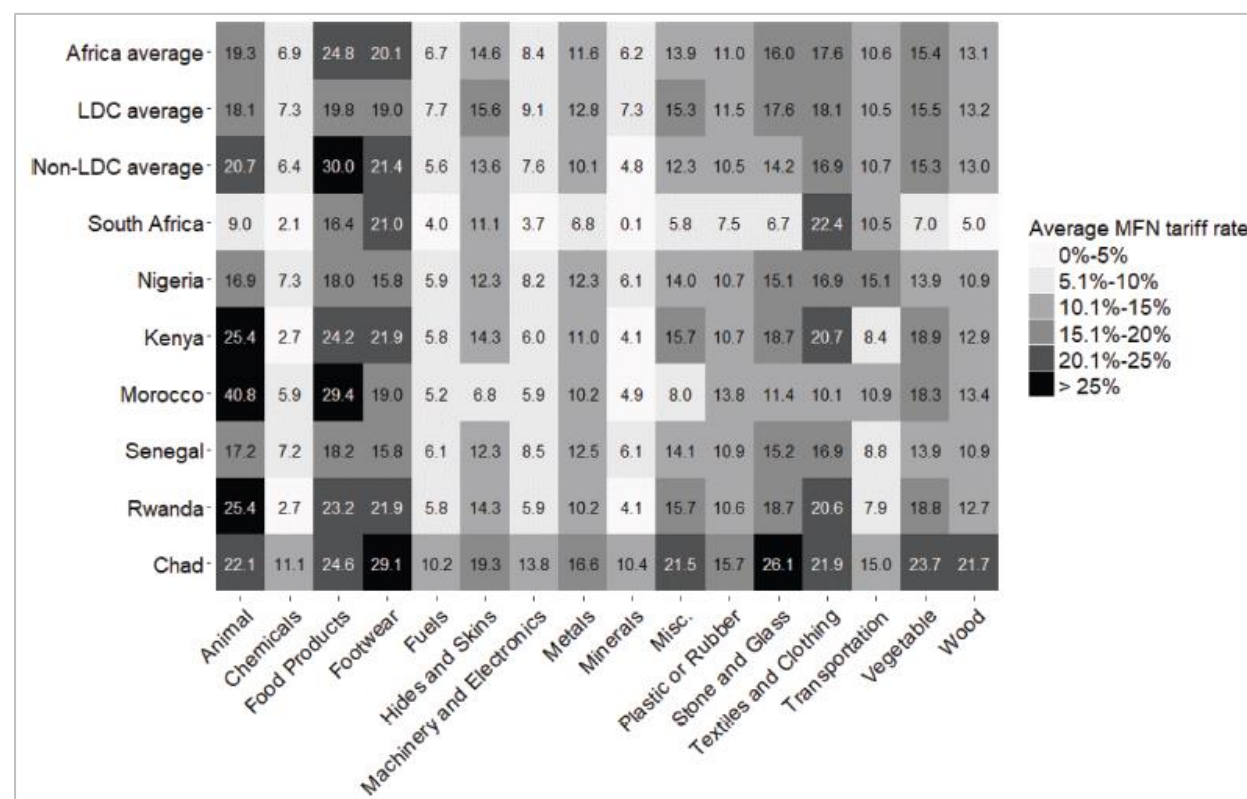
³³ Some material here is condensed from Gourdon et al. (2021) summarized [here](#) and the shorter blog version available [here](#).

³⁴ For PSRs, usually negotiated at the HS4 (around 1080 distinct product lines) or HS6 level (around 5800 distinct product lines), requirements vary greatly across FTAs. This presents a challenge both in terms of description (how do you compare over 700 different rules across the continent?), and in terms of recommendations for harmonisation (how do you harmonize?). The hoped-for compromise is a set of rules that are both realistic (i.e. likely to be accepted by the negotiating parties) and that serve their purpose at low compliance cost.

average applied MFN tariff by section for a selection of African countries and regions. Note the close similarities between Rwanda and Kenya due to their common membership in the EAC customs union.

The average applied rates across Africa are above 10% for most sectors, clearly an indication of the large potential for increased intra-African trade for AfCFTA signatories if compliance costs associated with satisfying origin requirements are not too high. Unfortunately, we only have anecdotic evidence from existing RECs since the tariff reductions and accompanying RoO are yet to be implemented.

Figure 20 Average applied MFN rates for selected sectors (2018)



Source: Signé and Madden (2020).

Notes: LDC and non-LDC averages refer to African countries. Simple averages of applied MFN tariffs by-products. Libya Somalia and South Sudan were excluded for lack of data.

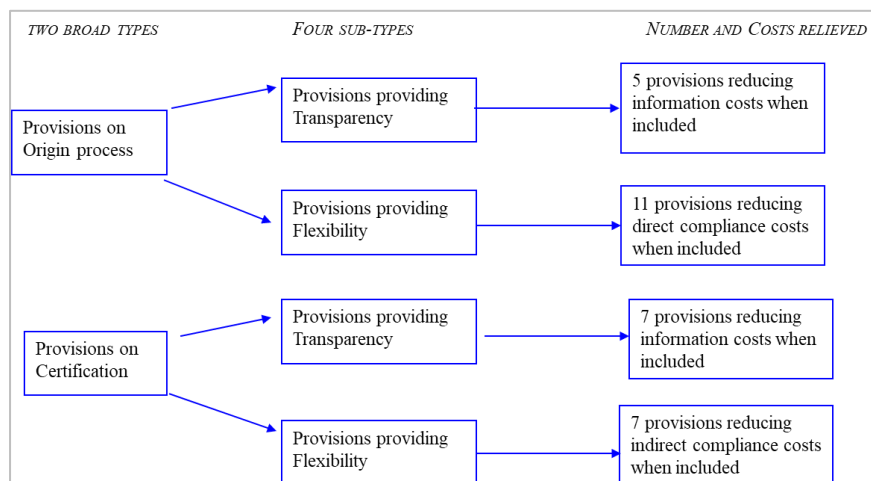
AfCFTA Regime-Wide Rules (RWRs)

Negotiators have agreed on a common set of RWRs that are applied to all products seeking eligibility for preferential status. Documentation preparation is time-consuming. This documentation can raise costs significantly as shown by estimates for Shoprite, a South African retailer exporting across Southern Africa SADC members.³⁵

³⁵ Gillson (2012) reports estimates of the administrative costs incurred by Shoprite, a South African retail company operating across SADC, in 2009. Preferences were worth \$13.6 million on \$550 million sales. The company estimated costs of compliance at \$5.8 million with a breakdown of 40% for staff to maintain customs data, 40% on in-house clearing and forwarding and 20% on the maintenance of a library to demonstrate compliance with rules of origin. Gillson also reports that Woolworth, operating from South Africa refrained from using SADC preferences, opting to pay full tariffs due because of the costly process of administering RoO documentation.

RWRs are the easiest to describe. As shown in Figure 21, there are 30 RWRs. Here, following Gourdon et al. (2020), they are classified under two categories: 16 relating to ‘process’ and 14 to ‘certification’. With few exceptions, each provision is either included or not included allowing using a zero-one [Yes, No] binary description.

Figure 21 Classifying Regime-Wide Rules (RWRs) by Transparency and flexibility categories



Source: Gourdon et al. (2020)

Table 16 and Table 17 list the 7 African RECs (number of members in parenthesis) participating in the harmonisation negotiations on RWRs. Table 16 (textual overlap) and Table 17 (regulatory distance) give two measures of the extent of the compromise to be reached and to which REC, on average, the AfCFTA is closest, namely Agadir.

Table 16 AfCFTA textual overlap for RWRs

PTA	AfCFTA	Tripartite	COMESA	ECOWAS	SADC	GAFTA	EAC	Agadir
AfCFTA (54)	100%	20%	8%	3%	8%	12%	9%	19%
Tripartite (26)		100%	5%	4%	6%	15%	12%	32%
COMESA (19)			100%	6%	25%	3%	9%	4%
ECOWAS (15)				100%	5%	3%	4%	3%
SADC (12)					100%	4%	14%	7%
GAFTA (6)						100%	6%	21%
EAC (5)							100%	10%
Agadir (3)								100%

Source: Gourdon et al. (2021).

Notes: Textual overlap is measured as a simple average of textual overlaps across 30 provisions. See Gourdon et al. (2020, box 3) for the definition and an example.

Table 17 Regulatory distance of RWRs of 8 African PTAs: Five closest PTAs

PTA	AfCFTA	Tripartite	COMESA	ECOWAS	SADC	GAFTA	EAC	Agadir
AfCFTA (54)		73	53			53	60	73
Tripartite (26)			57		57		67	67
COMESA (19)					83	57	73	
ECOWAS (15)					70			
SADC (12)							73	
GAFTA (6)								67
EAC (5)								67

Notes: For each one of the 30 RW rules, in any pair of PTAs, two members are similar (in the sense of no regulatory distance) if both either have (or do not have) the provision. If one member has the provision and the other does not, then they are distant (or dissimilar). Similarity on any provision receives a score of 100. Dissimilarity receives a score of 0.

Scores in the table are the simple average for all provisions across all PTA members. Entries are reported for the five closest PTAs. Other scores were not entered. The three closest PTAs indicated in bold.

Source: Gourdon et al. (2021).

Gourdon et al. compare provisions on process and certification broken down by the two criteria in the classification, transparency, and flexibility, across the 7 RECS participating in the negotiations and for AfCFTA. Details on the exact definition of each rule and interpretation are given in their paper. Since classifications [YES or NO] are not the same across RECs, there is a need for harmonisation.

Figure 22 Provisions on Process across RECs and the AfCFTA

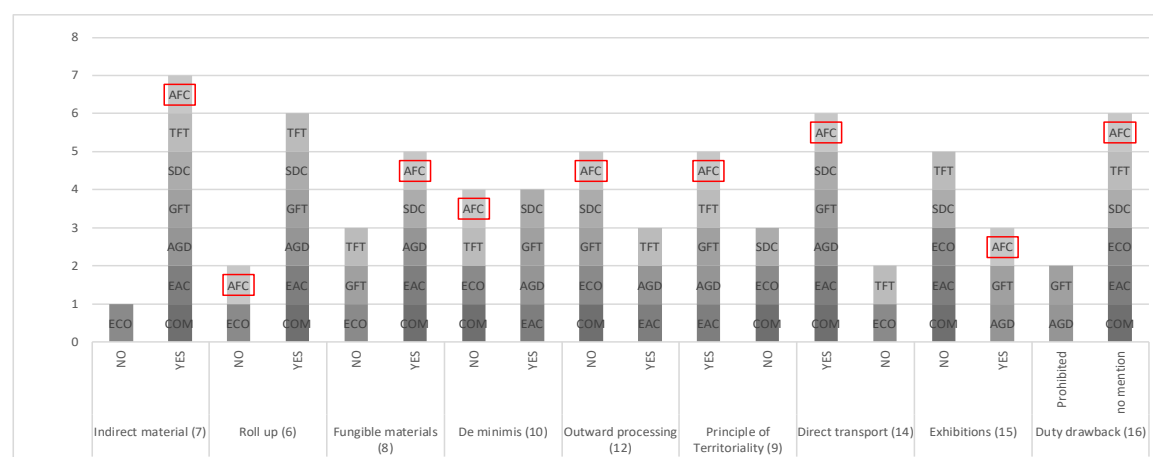
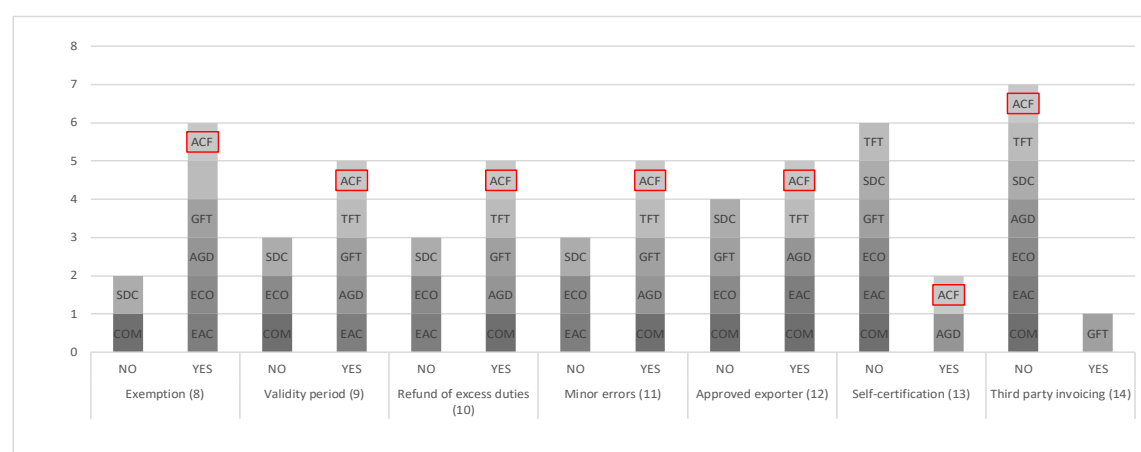


Figure 23 Provisions on certification are generally more flexible under AfCFTA



Abbreviations *Agadir* (AGD); *GAFTA* (GFT); *COMESA* (COM); *ECOWAS*(ECO); *SADC*(SDC); *Tripartite FTA* (TFT); *AfCFTA* (ACF)

Notes: Provisions are listed by increasing the order of prevalence (number in parenthesis next to provision) to least pervasive. YES is scored a 100 and NO a 0.

Except for territoriality (see Kim 2007 for a description and suggestions for relaxing that requirement) and direct transport, a YES is the less burdensome option.

Source: Gourdon et al. (2020)

On the positive side, all RECs have the same set of provisions for transparency in the process. There is less uniformity on both types of provisions for certification than for process. Differences for flexibility are greater than for transparency, probably a reflection of the greater difficulty in reaching an agreement on flexibility than on transparency. However, on the negative side, certain RWR provisions that would have reduced compliance costs have not been included in AfCFTA. Moreover, **the** provision for self-certification is an important missed opportunity due to the low capacity of customs authorities.³⁶ Third-party invoicing is another important missed opportunity.

AfCFTA PSRs agreed and PSRs under negotiation.

The ROF database used in this report to describe RoO identifies over 54,000 textually distinct origin criteria at the product level (i.e. distinct PSRs). Gourdon et al. (2021) describe the method used for collapsing these PSRs into ‘1,600 standardized’ coded criteria.³⁷ The PSRs are tabulated under three categories: (i) CTC; (ii) (no-CTC); (iii) WO amounting to 14 distinct PSR categories. Initially, RoOs were rather simple and across-the-board, then became progressively more complex over time with the addition of PSRs (see Table 18).

Table 18 Distribution of PSRs across PTAs and AfCFTA (for agreed products only)*

Label	Abbreviation	ECO ^{1/}	COM ^{2/}	GFT	AGD	EAC	SDC	ACF*
Column		1	2	3	4	5	6	7
(1) Change in Tariff Classification	CTC	100	79	36.8	65.8	75.0	63.2	69.3
1 Change in Heading	CTH			16.0	24.6	22	32.3	19.9
2 Change in Heading and Value content/Specific Process	CTH and VC/SP			0.9	2.7	2.6	0.8	
3 Change in Heading with Exceptions	CTH with EXC			0.3	2.3	0.3	3.2	1.6
4 Change in Heading with Allowances	CTH with ALW			1.3	1.9	4.9	0.0	0.1
5 Change in Heading or Value content /Specific Process	CTH or VC/SP	100		14.2	26.5	42.6	22.8	47.5
6 Change in Heading or Value content or WO	CTH or VC or WO		79					
7 Change in Sub-heading	CS			1.9	3.2	0.9	4.1	0.1
8 Change in Sub-heading or Value content /Specific Process	CS or VC/SP			2.2	4.6	1.7	0.0	
(2) No Change in Tariff Classification	NO CTC	0	21	54.4	24.6	12.6	28.4	13.3
9 Value Content	VC			48.9	15.9	4.2	21.8	12.8
10 Specific Process	SP			4.2	6.7	6.9	5.8	0.5
11 Value Content and Specific Process	VC and SP			0.4	0.8	0.3	0.1	
12 Value Content or Specific Process	VC or SP			0.4	1.2	1.2	0.7	
13 Wholly Obtained or Value Content	VC or WO		21	0.5				
14 (3) Wholly Obtained	WO	0	0	8.7	9.6	12.7	8.5	17.4

³⁶ See Signé and Madden (2021, section 4.3) and UNCTAD (2019) for elaboration and further evidence. WCO (2017, p.220) note that 100/149 PTAs have introduced self-certification, but report no self-certification among the 4 PTAs in their sample.

³⁷ For PSRs, each was extracted from the legal text, then screened by a natural language processing algorithm to identify the semantics and to match with key attributes of each of the 14 major types of rules in African PTAs listed in table 5. The result was 148 different coded PSR criteria ready for textual and for regulatory comparisons. Arbitrariness is unavoidable in such aggregation.

Notes: CTC + NO-CTC + WO=100. For example, the frequency ratio for (CH of VC/SP) of 19.1% for SADC means that for 19.1% of all HS6 products, the importer claiming the preferential regime in SADC can choose between a change of heading or a value content with a specific process.

^{1/} ECOWAS has a special clause in the wholly obtained (WO) RW provision which allows mixing raw materials from third countries with WO so long as they do not exceed 40% by “quantity”.

^{2/} COMESA. ¼ of PSR include not CTH, but CTH + ECT (exceptions), with different exceptions across sectors. Additionally, COMESA text includes WO alternative for all products, which could be considered as generic. Other PTAs mention WO in a separate article in RWR provisions.

* ACF(2021) Figures correspond to the products for which PSRs have been agreed (about 82% of lines)

Year of application of RW rules in parenthesis and of PSR, when adopted, in brackets. N.A. Not available.

AGADIR (N.A), [2003]; COMESA (1994), [2001]; EAC (2004), [2015]; ECOWAS (2003).; GAFTA (1998), [2008] ; SADC (1998), [2000]; Rules adopted in 1998 were not operational

Source: Gourdon et al. (2020)

Table 18 shows the distribution of PSRs for AfCFTA for which agreement was reached as of the end of 2021. The WO criterion is used more frequently than at the REC level, perhaps a reflection that the WO criterion is a focal point of agreement because of its simplicity and/or because the agreement was easier to reach on products with little transformation. Note also that no agreement has been reached on products with the SP criterion mostly used in Textiles & Apparel. Importantly, the CH criterion has been chosen in close to 70% of the agreed cases, often along with the choice of a VC or SP criterion as an alternative. This flexibility suggests that, so far, the PSRs selected under AFCFTA would be less demanding on exporters.

Table 19 **applies the regulatory similarity and textual overlap metrics to evaluate how close the agreed PSRs are to those in the RECs.** The cases of COMESA and ECOWAS illustrate the limitations of these measures. For COMESA that has no overlap in PSRs with other PTAs (see Table 18), the regulatory similarity scores in the COMESA column in

Table 19 are zeroes, although there is some textual overlap (5%) according to the textual overlap metric.

As to the PSRs where agreement has already been reached under AfCFTA, their text is closest to SADC (48%)³⁸ and to a lesser degree with EAC, Agadir and GAFTA in this descending order. This attests that the EU model dominated the drafting of AfCFTA PSRs, and many PSRs have been in fact “borrowed” specifically from SADC. The results also corroborate the finding from the RWR section of a significant likely influence from the TFTA text. In the case of PSR, TFTA’s PSR are publicly unknown. They are likely to have been influenced by those in SADC and EAC.

Gourdon et al. note a high degree of “coincidence” between PSRs in SADC and AfCFTA in furniture (Ch. 94), toys (Ch. 95), instruments and apparatus (Ch. 90), wood (Ch. 44), machinery (Ch. 84), electronics (Ch.85), chemicals (Ch.28-38), motor vehicles other than cars (ex Ch. 87), some metals (Ch. 73, 83) and meat (Ch. 2). The textual similarity is least present in some food sectors (<20%), but the chapter composition does not show an immediate pattern. For example, Ch. 86 (rail transport) and 88 (aircraft) show less similarity (<20%), primarily because of the addition of the RVC 40% option to the coinciding CTH rules.

³⁸ Gourdon et al. (2021) measure the regulatory distance between SADC ROO with those of the EU as translated in the PEM.

Table 19 Similarity metrics: AfCFTAs' PSRs versus those in the RECS

	AfCFTA*	COMESA	ECOWAS	SADC	GAFTA	EAC	Agadir	(Textual)**
AfCFTA*	100%	6%	3%	48%	20%	28%	29%	22%
COMESA	0%	100%	8%	5%	5%	4%	5%	5%
ECOWAS	47%	0%	100%	3%	3%	3%	3%	4%
SADC	58%	0%	21%	100%	23%	27%	42%	20%
GAFTA	40%	0%	11%	44%	100%	21%	40%	18%
EAC	50%	0%	37%	38%	26%	100%	36%	18%
Agadir	49%	0%	24%	58%	47%	48%	100%	25%
[Regulatory]**	41%	0%	19%	32%	26%	30%	35%	

Regulatory proximity

Notes: Spearman rank correlation between regulatory and textual similarity: 0.85

Zero values for COMESA in the regulatory column reflect that COMESA shares no PSR categories with other PTAs

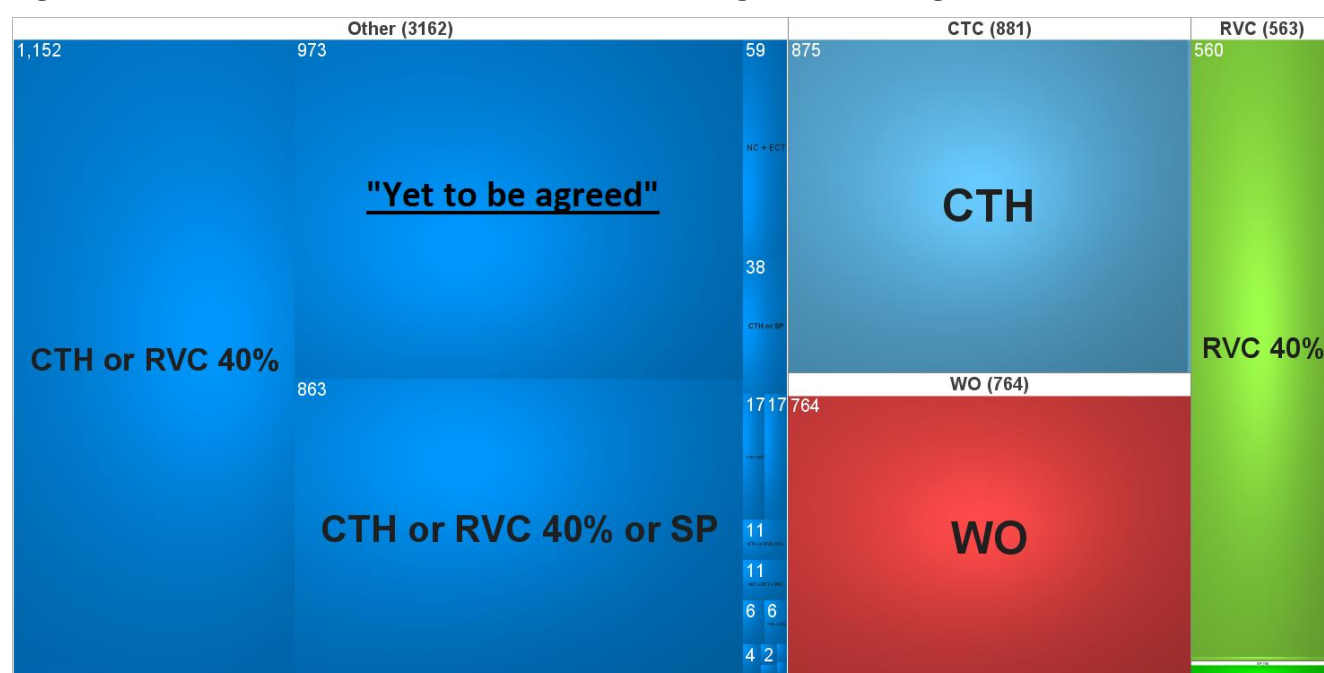
Textual overlap and regulatory similarity are measured as a simple average of textual overlaps and regulatory similarities in the PSR of each HS6 product. Textual [regulatory] overlap scores above [below] the diagonal.

*For AfCFTA, computation is based on 82% of tariff lines with agreed PSR.

** Average [regulatory] (textual) similarity of ACFTA with the 6 negotiating PTAs. Comparisons are over HS6 products

Source: Gourdon et al. (2021a).

Figure 24 Distribution of PSRs in AfCFTA across HS6 codes: Agreed and to be agreed



Notes: Figures in parenthesis refer to the number of HS codes in each category

Source: Gourdon et al. (2021, figure 7). Gourdon et al. (2021, figure 9) give the information using trade rather than the number of tariff lines as weights

Negotiations are stuck for sectors with high preferential margins

When compared with those under the ASEAN Free Trade Area (AFTA), RoO negotiated so far under AfCFTA are not taking the path towards low compliance costs. Not surprisingly, sectors where negotiations are stuck are those where interests diverge most across RECs. This would be where preferential margins are high, at least in some RECs. Table 20 confirms a higher average preferential margin for PSRs under negotiation, about twice as high at 21% than for those where agreement has been reached. This difference is very large.

Table 20 Comparing agreed PSRs with PSRs still under negotiation (as of December 2021)

PSR in AfCFTA a/	Pref margin b/	Regulatory similarity c/s	R-index d/
YES	11%	28	25
NO	21%	14	35

Notes: All values are simple averages over all hs6 products across all countries in the 6 negotiating PTAs. PSRs under negotiations are those for the sectors identified in table 3

a/ YES (NO) refers to PSRs where agreement has been reached (under negotiation).

b/ Unweighted average applied Preference margin (MFN minus preferential tariff) over 6 RECs PTAs

c/ The regulatory proximity index measures how close PSRs are (see Gourdon et al. tables 5 and 7. A higher value indicates closer match of PSRs

d/ R-index is an ordinal index based on an observation rule. For example an RVC of 60% is more restrictive than an RVC of 40% and a CTC requiring a CC (change of chapter) is more difficult to satisfy than a CTC requiring a CH (change of heading). A higher index value indicates a more stringent/restrictive PSR.

Source: Gourdon et al. (2020).

Note that the two indices used to describe heterogeneity across PSRs display expected differences. Regulatory similarity is higher among those PSRs where an agreement has been reached. Also R-index values, an indicator of the complexity and compliance costs of PSRs (see annex 2) are higher among PSRs where agreement has eluded negotiators. These average values between the two groups are also indirect evidence to the usefulness of these two indicators to describe and summarise the complexity of RoOs across PTAs.

In conclusion, while we do not know what PSRs will be negotiated for the remaining lines under negotiation, it is a fairly safe bet that the PSRs will be restrictive, at least as measured by R-indices. This would then be an indication of high compliance costs and low preference uptake. It would also jeopardise the objective of developing regional value chains across Africa.

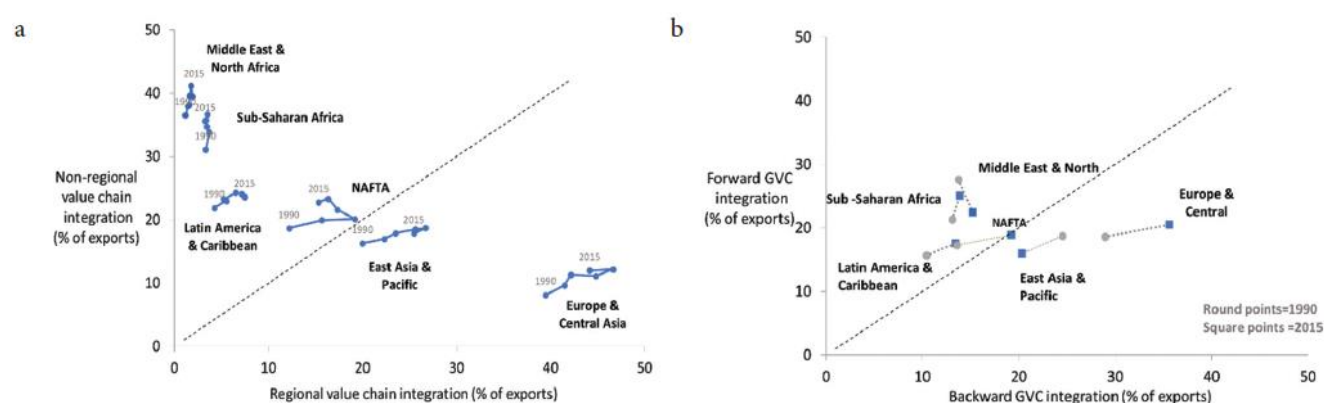
SSA remains the region with the lowest intra-regional trade

The AfCFTA is to contribute to the industrialisation of Africa through increased intra-African trade. Since the 1980s, most growth in trade has been in intermediate goods, a reflection of the sharp growth in supply chain trade (aka value chain trade). The share of imports in exports plus the share of exports undergoing further processing at the destination before reaching the final consumer in a third country is the usual measure of a country's involvement in Global Value Chains (GVCs) (see notes to Figure 25). This measure can be further broken down into regional and non-regional trade (RVC and non-RVC).

Figure 25 shows the evolution of these measures of supply chain trade at 5-year intervals across the world broken down by region. MENA and SSA are the two regions with the shortest lines, an indication of little growth in supply chain trade. For SSA non-RVC stagnated at around 5% an indication of small import content in gross exports and little further transformation of exports at destination Europe and East Asia are the two regions where RVC dominates non-RVC. Both regions have had ‘hub’ growth, i.e., trade growing mostly within the region. Note the NAFTA effect as the agreement got underway in the early nineties.

The magnitudes in these patterns are striking. Since the evolution of trade shares across countries and regions depend on relative changes across countries, one cannot say that barriers to trade in SSA were not reduced, but certainly whatever reductions, if any, that took place, were less than in most other regions, and were not favourable to the growth of regional supply chains.

Figure 25 Decomposition of GVCs by major geographic regions (a) and by type (b): 1990-2015



Notes: (a) Regional Value Chain (RVC)—not to be confused with regional value content also abbreviated RVC !! It is the share of exports that cross at least two borders in the same region, A (e.g. SSA, ASEAN). Backward participation shares for RVC trade measures the regional import content of exports from a member of region A and forward participation shares measure the value added in A directly exported to a member of region A, then re-exported. (b) Global GVC participation, GVC_s is the share of gross exports of country s that either makes use of imported value-added imported from another country, GVC_{bs} , or that is exported to another country for further processing, GVC_{fs} . ($GVC_s = GVC_{bs} + GVC_{fs}$)

Interpretation. Points above the 45° line indicate a higher GVC participation. For example, (a) shows that non-RVC participation remained lower than RVC for East Asia and Pacific and Europe and Central Asia during the period. For SSA, (b) shows that forward integration dominated over the period with no increase in backward GVC integration (presumably in part because of high trade barriers).

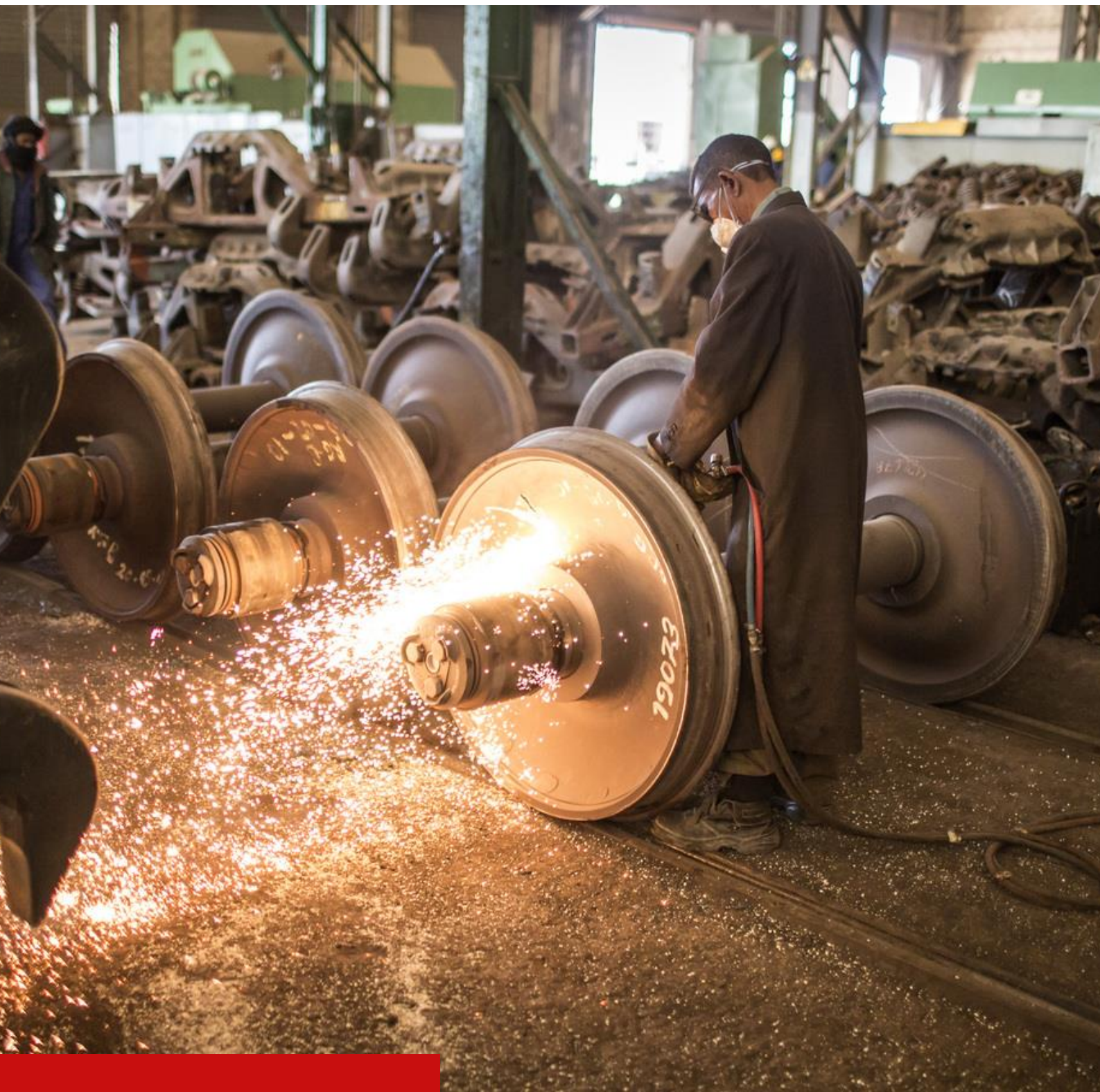
Source: Melo and Twum calculated from EORA data.

Even though preferential margins are substantial, Figure 25 shows that supply chain trade across the continent is low. Low compliance costs for RoO will be required for efficiency gains.³⁹ Given the weight of the “acquis” in the AfCFTA negotiations, devising RoO conducive to intra-African trade along the lines observed in East Asia will require simple RoO, like those in the AFTA. So far, negotiations are not heading in this direction. This said, as pleaded by Tsowou and Davis (2021), moving to integrated electronic systems including adopting electronic Certification Origin (e-certification of origin) should help reduce

³⁹ In their STCs, countries should refrain tariff lines with high tariff peaks since the efficiency gains increase more than proportionally with tariff height.

administrative costs substantially. Gains from implementing the Trade Facilitation Agreement, signed by all African Members of the WTO, would also likely be high.⁴⁰

⁴⁰ Because of SDT, countries have considerable leeway in fulfilling obligations under the TFA. Melo et al. 2022, table 3 report headline estimates of the Average tariff equivalent (AVE) of time reduction in customs for AfCFTA in the range [2.1-3.2%] for imports and [1.9-2.7%] for exports.



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