

A LEGAL ANALYSIS OF THE IMPACT OF RULES OF ORIGIN ON THE SUCCESS OF THE AFRICAN CONTINENTAL FREE TRADE AREA (AfCFTA)

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Abstract

This paper critically examined the impact of Rules of Origin (RoO) on the success of the African Continental Free Trade Area (AfCFTA), with a specific focus on Nigeria. The AfCFTA, as a flagship project of the African Union's Agenda 2063, seeks to enhance intra-African trade and industrialization by creating a unified continental market. However, the effectiveness of this initiative largely depends on the design, clarity, and implementation of RoO, which determine product eligibility for preferential tariffs. Adopting a doctrinal methodology, this paper analyzed the AfCFTA's rules of origin, identify legal gaps, and propose reforms for effective trade integration. The paper through the doctrinal research methodology highlighted how complex or restrictive rules of origin can impede trade facilitation, increase compliance burdens, and marginalize less industrialized economies like Nigeria. It further explored the challenges of customs administration, infrastructural deficits, and regulatory weaknesses that hinder Nigeria's capacity to fully exploit AfCFTA's benefits. The paper observed that properly crafted RoO can stimulate industrial transformation, prevent trade deflection, and foster regional value chain integration. It concluded by positing that the success of AfCFTA in Nigeria hinges on balancing trade liberalization with institutional readiness and industrial competitiveness and recommended for the harmonization of RoO across sectors, capacity-building for customs officials, digital certification systems, and alignment of RoO with Nigeria's industrial policy.

Key words: Trade, Development, Globalization, Trade Flows, Tariffs and Market Access

1. INTRODUCTION

The establishment of the African Continental Free Trade Area (AfCFTA) represents a significant advancement in the continent of Africa's economic integration. It reflects the continent's long-standing desire to improve industrial growth, encourage intra-African commerce, and lessen reliance on outside markets. The African Customs Union and the African Economic Community will be established more quickly than the AfCFTA. AfCFTA is a flagship project of the African Union's Agenda 2063, which aims to establish a single continental market for goods and services with free movement of investors and businesspeople.¹ However, the creation, application, and enforcement of the Rules of Origin (RoO) are among the most important factors affecting the AfCFTA's effectiveness. Rules of Origin are essential to the functioning of any free trade area since they specify the criteria used to determine the place of manufacture of a commodity. Under

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¹ Agreement Establishing the African Continental Free Trade Area 2019, art. 3

trade agreements like the AfCFTA, they are essential for figuring out who is eligible for preferential tariff treatment. The Rules of Origin (Annex 2), a crucial component of the AfCFTA Protocol on Trade in Goods, and the Agreement Establishing the African Continental Free Trade Area provide the legal basis for the AfCFTA's RoO.²

In order to implement preferential trade agreements, the standards used to identify a product's national source are crucial. Trade diversion, in which goods from non-member nations are channeled through member states with the lowest tariffs, is prevented by these regulations.³ Within the framework of the AfCFTA, RoO are not just procedural mechanisms but foundational principles that determine which products qualify for tariff reductions or exemptions under the agreement. In doing so, they need to safeguard the integrity of the free trade area, encourage local production, and facilitate industrialization through value addition within the continent.⁴ However, the formulation and implementation of RoO also pose significant challenges. These include the complexity of the criteria, administrative bottlenecks, and the risk of their misuse for protectionist purposes.⁵

The negotiation and application of RoO in the AfCFTA context are particularly intricate due to the diversity in economic structures, levels of industrialization, and production capacities among African countries. While more industrialized economies may push for stricter rules to protect nascent industries, less developed economies may advocate for more lenient criteria to allow broader access to regional markets. This divergence presents a policy challenge that can either foster regional cohesion or entrench asymmetries in trade benefits.⁶ Furthermore, there are significant regional differences in the administrative capabilities of customs officials as well as the infrastructure and data available for origin verification, which could compromise the consistent implementation of RoO.⁷

Another dimension to consider is the potential of RoO to catalyze structural transformation and regional value chain development in Africa. If appropriately designed and implemented, RoO can serve as a tool for encouraging local sourcing of inputs, promoting backward and forward linkages in production, and reducing Africa's overreliance on raw material exports.⁸ This aligns with the AU's Agenda 2063 and the United Nations Sustainable Development Goals (SDGs), which prioritize industrialization, the provision of decent work, and inclusive economic growth. However, RoO may unintentionally turn into a trade restriction and impede the very integration they are intended to promote if infrastructural investment and complementary industrial policies are lacking.⁹

² Protocol on Trade in Goods to the Agreement Establishing the AfCFTA 2019, art. 13.

³ A Estevadeordal and K Suominen, *Rules of Origin in Preferential Trading Arrangements: A Global Assessment* (Inter-American Development Bank 2004) 57.

⁴ G Erasmus, 'The Role of Rules of Origin in African Trade Integration' (Tralac Trade Brief 2020).

⁵ P Brenton and H Imagawa, 'Rules of Origin, Trade and Customs' (World Bank Working Paper, 2019).

⁶ C Ajibo, 'The African Continental Free Trade Area Agreement: A Critical Review' [2020] (13)(1) *African Journal of Legal Studies*, 56.

⁷ W Viljoen, 'Implementing the AfCFTA Rules of Origin: Challenges and Opportunities' (Tralac Working Paper, 2021).

⁸ W Kassa and A Zeufack, 'Unlocking Africa's Industrial Potential through Rules of Origin' (World Bank Policy Research Paper, 2022).

⁹ M Jaime de and A Portugal-Perez, 'Preferential Rules of Origin and the African Continental Free Trade Area' (CEPR Discussion Paper No. 15071, 2020).

2. CONCEPTUAL CLARIFICATIONS

2.1.1 Trade

This refers to the trade of goods and services between nations (international or foreign trade) or within a nation (domestic or home trade). Typically, traders use a medium of credit or exchange, like money, to negotiate. Money was created before the beginning of written history, despite the fact that some economists consider barter that is, exchanging goods without using cash to be an early form of commerce. Specialization and the division of labor, a common economic activity in which people and groups focus on a specific part of production but exchange their output for other goods and necessities, are the reasons commerce exists.¹⁰

2.1.2 Development

Akanle looked at development from the viewpoint of people who are dealing with developmental problems. He asserted that any problem that adversely affects human fulfillment and quality of life is a threat to development and an indication of underdevelopment, and that people will stop at nothing to avoid it. In order to make social structures development compliant, development entails reorienting and reorganizing all institutions and social systems.¹¹ Development is the enhancement of a nation's social and economic circumstances.

2.1.3 Globalization

Globalization is the term used to describe the rapid acceleration of social, institutional, and political developments as well as the increase in worldwide economic integration, global governance, and universal social and environmental growth. Globalization is evident in the forms of interconnections, economic integrations, and the flow of people, goods, and services across the different states. An interdependent system with integrated cultural experiences and a single market and world are projected by globalization, which has been defined as the process of specific change in economic, political, social, and cultural variables that are integrated within international or regional boundaries.¹²

2.1.4 Trade Flows

Trade flow is the movement of products and services between nations, impacted by variables including investment and saving patterns and sectoral heterogeneity. Bilateral trade flows depend on a number of factors. Apart from supply and demand, other significant influences of international trade include government regulations, trade costs, location, cultural ties, and prior trading relationship experience.¹³ Both new and established bilateral trade flows can be connected to periods of diminishing global demand in a number of ways.

2.1.5 Tariffs

This type of tax is applied to goods when they are transported across a political or national border. A government-imposed schedule of duties on imported or, in certain countries, exported commodities is also known as this. Generally, tariffs are levied as a percentage of the imports'

¹⁰ D Dollar and A Kraay, 'Trade, Growth and Poverty' [2004] (114)(493) *The Economic Journal*, F22 – F49; K D Hoffman (ed), *Marketing Principles and Best Practices* (3rd edn, Thomson/South-Western 2005) 407.

¹¹ O Akanle, 'The Development Exceptionality of Nigeria: The context of Political and Social Currents' [2013] (59)(3) *Africa Today*, 31–48.

¹² R Kiely, *Neo-Liberalism, the Third Way and Anti-Globalization* (UK: Parliament Publications 2009) 18.

¹³ A Nicita and M Olarreaga, 'Information and Export Performance' [2007] (7)(2) *Journal of Industry, Competition and Trade*, 95–111.

value, and the exact rate varies based on the product or sector. In trade talks with foreign nations, governments may also use tariffs as a negotiating tactic or as a way to increase revenue.¹⁴ Ad valorem tariffs and particular tariffs are the two categories of tariffs.

2.1.6 Market Access

Market access, as used in international trade, describes a company's capacity to sell its products and services in another nation in order to gain entry into a foreign market. Free trade is not the same as market access since, in the former case, products and services can flow freely across borders without any restrictions, while in the latter case, access is typically subject to requirements or conditions (such as tariffs or quotas). Therefore, increasing market access is frequently a more attainable objective of trade talks than attaining free trade. Trade in goods and trade in services have very different market access concessions and restrictions. Market access for services is more closely related to the implementation of domestic regulations behind the border, whereas market access for commodities primarily entails border-level measures like customs duties or quantitative limits. Furthermore, preferential market access for goods and services has unique features that set it apart from non-preferential market access within the multilateral trade system in a world where regionalism is on the rise.¹⁵

3. ANALYSIS OF THE AFRICAN CONTINENTAL FREE TRADE AREA'S RULES OF ORIGIN

The African Continental Free Trade Area (AfCFTA) is a mega-regional trade pact that seeks to strengthen economic integration in Africa by facilitating investment and travel, as well as by establishing a single market for products and services.¹⁶ Accelerating intra-African commerce and improving Africa's standing in the multilateral trading system are the goals of the AfCFTA. The AfCFTA, in this sense, embodies a pan-African vision that seeks to bring African nations together as a regional commercial bloc. By establishing a competitive African market, the union is expected to strategically use its strength in international trade discussions. Perhaps more than ever, African governments are embracing multilateralism at a time when trust in the multilateral economic environment is declining due to trade disputes in some regions.¹⁷ Both the "wholly obtained" and the "substantially transformed" criteria are used under the AfCFTA's rules of origin to determine whether an item qualifies for preferential treatment (such as tariff reductions, etc.).¹⁸ These two factors serve as the foundation for identifying the origin of items in African regional economic communities' (RECs') rules of origin. The application of these two criteria in the African free trade area is described below.

3.1 Wholly Obtained Criterion

When all of the materials used to produce a product came from sources covered by the AfCFTA, the product is considered fully acquired. This criterion immediately disqualifies a product from being traded on preferential conditions (such as lower tariff treatment) in Africa if it contains

¹⁴ C C Wigwe, *The World Bank, IMF and State Sovereignty* (Mountcrest University Press 2011) 78.

¹⁵ Wigwe (n 14).

¹⁶ Agreement Establishing the African Continental Free Trade Area, in force 30 May 2019.

¹⁷ F Obeng-Odom, 'The African Continental Free Trade Area' [2020] (79)(1) *American Journal of Economics and Sociology*, 167–197; C Ajibo, 'African Continental Free Trade Area Agreement: The Euphoria, Pitfalls and Prospects' [2019] (53)(5) *Journal of World Trade*, 871–894.

¹⁸ Annex 2 of the AfCFTA 2019, art 4. Under the AfCFTA Rules the 'substantially transformed' criterion is called the 'sufficiently worked' criterion.

materials from a non-AfCFTA state.¹⁹ Therefore, only a state party's natural resources and goods manufactured entirely of materials sourced from a state party are considered "wholly obtained."²⁰ According to the AfCFTA Rules' Article 5(1)²¹ The following goods may be considered fully acquired under the AfCFTA:

- a) mineral goods that are taken from the earth, the sea, or below the seabed, including any non-living natural resources; b) all kinds of fruits, vegetables, and plants, as well as anything made only from them; c) any goods derived from fishing and hunting within the AfCFTA; d) all invertebrates, plants, and marine and aquatic creatures covered by the AfCFTA, including goods made solely from them; and e) electricity generated in any of the member states.

The secretariat of the AfCFTA released a guide to assist in interpreting the AfCFTA Rules in 2022. Volume 1.0 of the "AfCFTA Rules of Origin Manual" (AfCFTA Manual) aims to "allow the State Parties to apply and interpret the AfCFTA Rules of Origin consistently."²² The AfCFTA Manual appears to act as a "statute of interpretation," providing exporters and other stakeholders with guidance on the meaning of phrases in the AfCFTA Rules and how to determine thresholds. Therefore, the AfCFTA goes above and above to define terminology and give instances in the Manual, regardless of how explicit the AfCFTA Rules are. The AfCFTA Manual, for instance, offers the following particular instances of totally procured goods:²³

- a. Since gold is collected from South African soils, it is entirely obtained through mining.
- b. Even if the maize seed was initially imported from, say, Argentina, Kenyan maize is entirely grown there.
- c. The term "wholly obtained" refers to hides derived from cattle that are born, grown, and killed in Chad.
- d. Regardless of the wire's original production location, copper recovered from discarded electrical wire is entirely sourced in Guinea. If copper is used to manufacture copper plates, Guinea is also where the plates are entirely sourced from.
- e. Handbags are entirely manufactured from leather from Ethiopia.²⁴

These instances show that the AfCFTA Rules' entirely obtained requirement focuses mainly on whether the end result is an accurate and comprehensive representation of the original state. Notably, the goods listed in the aforementioned cases are not essential to the different African nations,²⁵ they serve simply to support the need that a product be totally derived from the nation in issue, whether by harvesting, extraction, rearing, etc., in order for it to be ascribed origin based on the wholly obtained criterion.

¹⁹ African Continental Free Trade Area Secretariat Rules of Origin Manual 2022, clause 2.2.1

²⁰ *Ibid*, clause 18.

²¹ Annex 2 on Rules of Origin of the AfCFTA Protocol on Trade in Goods 2019, art 5.

²² African Continental Free Trade Area Secretariat Rules of Origin Manual 2022 at iv.

²³ *Ibid* at 14.

²⁴ *Ibid*.

²⁵ For example, copper is considered the backbone of Zambia and is currently the world's 7th largest producer of copper. However, in the example above, it would seem Guinea is primarily known for the production of Copper. Same as the example on gold. It is a known fact that Ghana is Africa's largest gold producer not South Africa. Thus, the examples in the Manual do not draw any deeper interpretation as to the priorities of the countries

3.2 Sufficiently Worked or Processed Products Criterion

Under the AfCFTA, goods made using non-originating materials may nonetheless be considered originating and receive preferential treatment.²⁶ More specifically, if such items meet one of the four requirements listed in Article 6 of the AfCFTA Rules, they may be eligible for preferential treatment. The following is provided by Article 6:

When a product meets one of the following requirements, it is deemed suitably worked or processed for the purposes of Article 4(b) of this Annex: (a) value added; (b) content of non-originating materials; (c) modification of the tariff heading; or (d) particular procedures.

Below is an explanation of these criteria:

- a. It has undergone certain “specific” processes²⁷ - For instance, raw gold from a non-AfCFTA member can be imported by a refined gold producer who resides and works in a member state. Since the process of turning raw gold into refined gold involves significant processing, refining, and polishing, the refined gold can be considered to have originated in the state party where the refining took place.
- b. There has been a change in the tariff heading of the product – Each item has its own tariff heading. Therefore, when a product's production process alters its nature from its initial state, the result is significantly different from the original non-originating material used, the final product is considered to have originated in the state party where the manufacturing process was conducted, and the manufacturing process is considered substantial, thereby justifying a new tariff classification. For instance, shower caps with a tariff heading of 65.06 will be considered to be produced in the state party where the non-originating plastic materials with a tariff heading of "39.01" that were derived from a third party were processed into shower caps.²⁸
- c. There has been a value addition on the product as a result of being processed – Before a product may satisfy this requirement, a certain amount of value addition must be present. The criterion for value addition is the “discrepancy between the final product's ex-works price and the FOB-based customs value of the materials utilized in its manufacture that were imported from outside the State Parties.”²⁹ In essence, for there to be a value addition, the final product's ex-works price needs to be much greater than the value of the raw materials that were imported from a third party and used to produce it.
- d. The non-originating material is either below the product's required local content threshold or below the maximum threshold. This criterion indicates that “The products must be made entirely or in part in a State Party using non-originating (or unknown origin) materials, and the value of these materials cannot be greater than the maximum percentage of the final product's Ex-Works price listed in Appendix IV of Annex 2 on Rules of Origin.”³⁰ The Common Market for Eastern and Southern Africa (COMESA) functions similarly to the four

²⁶ Annex 2 on Rules of Origin of the AfCFTA Protocol on Trade in Goods 2019, art 6.

²⁷ Goods listed in Appendix IV of AfCFTA Rules shall qualify as originating goods if they satisfy the specific rules set out in it.

²⁸ African Continental Free Trade Area Secretariat Rules of Origin Manual 2022 at 17.

²⁹ *Ibid*

³⁰ African Continental Free Trade Area Secretariat Rules of Origin Manual 2022, clause 2.2.2.4.1

criteria mentioned above,³¹ Exporters have additional opportunities to comply with the rules of origin thanks to this flexibility.³²

Certain methods are used to determine goods that are not significant enough to grant origin under the AfCFTA. These procedures are:³³

- i. activities that are only focused on keeping products in good condition while they are being stored and transported;
- ii. disassembling or putting together packaging;
- iii. washing, cleaning, or procedures to get rid of a product's coatings, paint, oxide, dust, or oil;
- iv. basic pressing or ironing techniques;
- v. basic painting or polishing techniques;
- vi. husking, bleaching, polishing, or glazing rice and grains, either completely or partially;
- vii. partial or complete milling of crystal sugar, processes to color sugar or create sugar lumps;
- viii. removing the skin, seeds, or shells from Chapter 7 vegetables, Chapter 8 fruits, nuts (Heading 08.01 or 08.02), or groundnuts (Heading 12.02);
- ix. simple sifting, screening, sorting, classifying, grading, or matching;
- x. basic cutting, grinding, or sharpening;
- xi. basic packaging tasks, like putting products in bottles, cans, flasks, bags, cases, boxes, or securing them to cards or boards;
- xii. adding or printing labels, logos, and other identifying symbols to the products or their packaging;
- xiii. basic material mixing, whether or not it involves different types of materials; which excludes actions that result in a chemical reaction;
- xiv. the straightforward assembly of components to form an entire article;
- xv. a combination of two or more actions listed in sub-paragraphs (a) to (n); and
- xvi. the killing of animals.³⁴

A situation where groundnuts are brought into an AfCFTA member state in huge quantities from China, packaged into smaller packs, and then exported to another member state would serve as an illustration of the aforementioned. The repackaged groundnuts are not considered a new product under the AfCFTA Rules, and the repackaging process alone does not grant origin. The groundnut is therefore still considered to be produced or sourced from China and is not eligible for preferential treatment under the AfCFTA. To put it simply, if a product's operational procedures don't impact its essential qualities like a value addition or a classification modification, as was previously mentioned Africa won't be its origin. Therefore, AfCFTA will not assign provenance to goods.

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³¹ COMESA Protocol on the Rules of Origin 2022, rule 2(1)

³² Y Ayele, 'Assessing the Restrictiveness of Rules of Origin in the AfCFTA' (2024 ODI Report) <<https://odi.org/en/publications/assessing-the-restrictiveness-of-rulesof-origin-in-the-afcfta/>> accessed 4 June 2025.

³³ Annex 2 on Rules of Origin of the AfCFTA Protocol on Trade in Goods 2019, art 7.

³⁴ *Ibid.*

The AfCFTA is widely considered a transformative initiative with the potential to integrate Africa's economies and spur industrialization.³⁵ The Rules of Origin (RoO), a complicated but essential tool in the creation of trade policy, are at the center of this project. Rules of Origin are essential to any preferential trade agreement's success, especially in the context of the AfCFTA.³⁶ For Nigeria, Africa's largest economy by GDP and population, the implications of these rules are particularly significant, given the nation's industrial base, informal trading networks, and evolving customs infrastructure. The effectiveness of RoO can either bolster intra-African trade or entrench existing barriers, depending on their clarity, enforceability, and compatibility with domestic capabilities.³⁷

Rules of origin aid commerce in various ways besides deciding whether a product qualifies for preferential treatment in a free trade area (FTA). The strategic significance of RoO in influencing Nigeria's experience under the AfCFTA is examined in this section, with special focus on how well-written regulations can foster industrial transformation, alleviate trade deflection, boost value addition, and encourage regional value chain participation.

4.1 Trade Facilitation and Industrial Competitiveness

Improving intra-African commerce by lowering tariffs and non-tariff trade barriers is one of the main goals of the AfCFTA. RoOs may prevent Nigerian companies from fully benefiting from the deal, though, if they are overly strict or complicated. To stop trade deflection, the AfCFTA's RoO protocol uses two strategies: a general framework and product-specific rules (PSRs)³⁸ and protect nascent industries across the continent. Trade deflection is "a shift in export destinations brought on by more trade restrictions in a specific export market."³⁹ However, this dual approach, while flexible, introduces compliance costs for Nigerian manufacturers, particularly SMEs with limited administrative and logistical capacity to navigate origin certification processes.⁴⁰

Moreover, Nigeria's industrial sector is heavily reliant on imported inputs, particularly for manufacturing and assembly operations in sectors like pharmaceuticals, automobiles, and textiles.⁴¹ Where RoO demand high value-added transformation or prohibit the use of third-country inputs beyond a certain threshold, many Nigerian manufacturers may be disqualified from preferential market access under AfCFTA, thus stifling competitiveness and reducing

³⁵ B Takefman, 'Breaking Down the AfCFTA: What you Need to Know About Africa's Latest Trade Initiative' <<https://researchfdi.com/resources/articles/breaking-down-the-afcfta-what-you-need-to-know-about-africas-latest-trade-initiative/#:~:text=Phase%20II%3A%20Intellectual%20property%20rights,and%20should%20be%20completed%20soon>> accessed 2 September 2025.

³⁶ L Singe and P Madden, 'Considerations for Rules of Origin Under the African Continental Free Trade Area' [2021] (8)(2) *J Afri Trade*, 20.

³⁷ C M Nwankwo and C Ajibo, 'Liberalizing Regional Trade Regimes through AfCFTA: Challenges and Opportunities' [2020] (64)(3) *J Afri L.*, 312-313.

³⁸ S Inama, *Rules of Origin in International Trade* (United Kingdom: Cambridge University Press 2022) 244.

³⁹ A Veysel, 'The Anatomy of Trade Deflection' (Economics Research Working Paper Series 2012) 1 <https://digitalcommons.fiu.edu/economics_wps/23> accessed 20 September 2025.

⁴⁰ UN Economic Commission for Africa, 'Facilitating Cross-Border Trade Through a Harmonized Rules of Origin Regime in the AfCFTA' (ECA Policy Brief, 2021).

⁴¹ A Adegbite and O Okonkwo, 'Industrial Policy and Trade in Nigeria: Assessing the Role of the AfCFTA' [2022] (8)(2) *Journal of African Trade*, 2.

export potential.⁴² For instance, the textile and apparel industry, a critical sector for employment generation in Nigeria, faces difficulty in meeting the ‘double transformation’ rule often applied in AfCFTA negotiations, which requires both spinning and weaving to take place within member states.⁴³ Nigerian textile firms, which import significant portions of their raw materials from Asia, may be sidelined by such rules, discouraging participation in AfCFTA markets.

While RoO are meant to prevent trade deflection, they can also cause trade diversion, leading to inefficient sourcing from within AfCFTA even when more cost-effective global alternatives exist.⁴⁴ For Nigeria, a heavily import-dependent economy, this risk must be balanced carefully. Overly rigid RoO can increase production costs and undermine competitiveness, especially in industries like pharmaceuticals and machinery assembly that depend on global supply chains.⁴⁵ Moreover, if Nigeria perceives that RoO disproportionately benefit more industrialized African economies, political discontent may threaten the broader regional integration agenda. This makes it critical for RoO under AfCFTA to be sensitive to the development asymmetries among member states.⁴⁶

If everything else is equal, a market with high trade barriers, like complicated rules of origin, will make companies shy away from exporting to that market and instead look for other export markets with easier rules of origin. The AfCFTA's rules of origin must be straightforward in their execution since they aid in preventing trade misdirection. Similar to this, RECs should aim to streamline their rules of origin. More significantly, all African stakeholders should unite to standardize the conflicting rule of origin clauses throughout the continent.

4.2 Customs Administration and Compliance Burden

The effective implementation of RoO relies heavily on the institutional capacity of customs authorities to verify compliance. In Nigeria, the Nigeria Customs Service (NCS) is burdened by a legacy of bureaucratic inefficiencies, inconsistent documentation processes, and corruption.⁴⁷ Although the country has made strides in automating customs procedures through the Nigeria Integrated Customs Information System (NICIS), the certification of origin, particularly for small traders, is fraught with delays and high informal costs.⁴⁸ Further, the informal sector in Nigeria, which constitutes approximately 65% of economic activity,⁴⁹ often lacks the legal identity and recordkeeping needed to satisfy origin verification. As a result, many informal traders and small manufacturers may be de facto excluded from AfCFTA benefits, despite their substantial role in domestic and regional commerce.

⁴² T Hartzenberg, ‘Rules of Origin and the AfCFTA: Lessons from Trade Agreements’ (TRALAC Working Paper, 2021).

⁴³ UNCTAD, *Economic Development in Africa Report 2019: Made in Africa – Rules of Origin for Enhanced Intra-African Trade* (UNCTAD Publishing 2019).

⁴⁴ UNCTAD, *Economic Development in Africa Report 2019: Made in Africa – Rules of Origin for Enhanced Intra-African Trade* (Geneva: UNCTAD 2019) 3–11.

⁴⁵ *Ibid.*

⁴⁶ *ibid.*, 16.

⁴⁷ Centre for the Study of the Economies of Africa, ‘AfCFTA Implementation Challenges in Nigeria’ (Policy Brief No. 7, 2022).

⁴⁸ World Bank, ‘Nigeria Systematic Country Diagnostic: Transitioning to a Middle-Income Economy’ (Report No. 160278-NG, 2022).

⁴⁹ National Bureau of Statistics, ‘Labour Force Statistics: Unemployment and Underemployment Report’ <<https://www.nbs.org>> accessed 2 September 2025.

Additionally, harmonizing the national implementation of AfCFTA RoO with Nigeria's existing trade policies and bilateral arrangements poses another compliance challenge. For example, discrepancies between the ECOWAS Trade Liberalization Scheme (ETLS) rules and those of AfCFTA could create confusion and overlapping obligations, thereby undermining trade predictability.⁵⁰

4.3 Protection of Infant Industries and Import Substitution

From a policy standpoint, Nigeria has historically adopted a protectionist approach aimed at developing local industries. RoO, if appropriately crafted, can support these objectives by preventing trade deflection, where goods are imported into low-tariff countries and re-exported to high-tariff ones without sufficient transformation. However, overly lax RoO may undermine Nigeria's infant industry protection policies. For instance, if goods originating from non-AfCFTA states, such as China or India, are merely assembled in low-labour-cost African countries like Ethiopia or Djibouti and re-exported to Nigeria under AfCFTA preferences, this could lead to unfair competition against Nigerian manufacturers.⁵¹ This phenomenon, known as 'origin fraud,' not only erodes local industrial capacity but also undermines public support for the trade agreement. Thus, while stricter RoO help safeguard domestic industries, they also risk marginalizing Nigerian exporters who lack the infrastructure to meet complex origin requirements. This trade-off highlights the need for a balanced RoO design that supports domestic production without unduly burdening exporters.

4.4 Impact on Dumping

The fact that rules of origin can be used as a tool to stop dumping in both domestic and foreign trade makes them significant. Dumping is the practice of an exporting nation selling its commodities at a price below what is sold in its own market, making the exported items extremely inexpensive in the market of the importing nation.⁵² Market disruption results from dumping, particularly for rivals (local producers in the importing nation) who make comparable goods to the ones being dumped. Rules of origin can therefore be used to shield members' home industries from foreign competition in free trade agreements.⁵³ Rules of origin act as a safeguard to stop goods from being dumped in particular African nations with sizable markets (such as South Africa and Nigeria) because they specify the requirements that must be met before a product can claim origin, receive preferential treatment, and be imported into an FTA.⁵⁴ Rules of origin are therefore a way to promote free trade and anti-dumping.

4.5 Impacts on Regional Value Chain

RoO also have a profound impact on the development of regional value chains (RVCs), a critical component of the AfCFTA's success. Ideally, RoO should be structured to encourage sourcing

⁵⁰ WTO Trade Policy Review: Nigeria, WT/TPR/S/374, 2023.

⁵¹ T Yusuf, 'Trade Deflection and Rules of Origin under AfCFTA: Implications for Nigerian Industries' [2022] (3) *African Journal of International Economic Law*, 22.

⁵² I Van Bael and B Jean-Francois, *EU Antidumping and other Trade Defence Instruments* (Kluwer L Intl 2019) 102

⁵³ J A LaNasa, 'An Evaluation of the Uses and Importance of Rules of Origin, and the Effectiveness of the Uruguay Round's Agreement on Rules of Origin in Harmonizing and Regulating Them' <<https://www.jeanmonnetprogram.org/archive/papers/96/9601ind.html>> accessed 3 July 2025.

⁵⁴ O Osaretin, 'AfCFTA, Dumping and Enforcement of Rules of Origin: Issues for Legislative Intervention' <<https://ir.nilds.gov.ng/handle/123456789/1494>> accessed 5 August 2025..

within Africa, thereby fostering supply chain integration. However, current rules often lack the flexibility to accommodate fragmented production processes that characterize RVCs. In West Africa, Nigerian firms could potentially benefit from sourcing inputs from neighbouring countries (example, cocoa from Ghana or leather from Mali) and exporting finished products across the continent. This cumulation approach facilitates intra-African production sharing and is essential for sectors like cocoa, where Nigeria produces raw beans but lags in processing capacity. RoO that permits single or double transformation would encourage Nigerian firms to engage in downstream activities without being locked out of AfCFTA preferences due to strict origin criteria.⁵⁵

However, if RoO are too narrowly defined, for example, requiring wholly obtained or substantially transformed criteria that exclude regional input aggregation, then Nigeria's participation in RVCs may be limited.⁵⁶ Moreover, the absence of mutual recognition of origin certification among African countries hampers the free movement of intermediate goods, which is essential for building dynamic RVCs.⁵⁷ Nigeria's leadership in ECOWAS could be instrumental in advocating for simplified and harmonized origin protocols that support regional industrial clusters.

5. CHALLENGES TO THE SUCCESSFUL IMPLEMENTATION OF THE AFRICAN CONTINENTAL FREE TRADE AREA IN NIGERIA

The AfCFTA, which seeks to establish a single market for goods and services among 54 of the 55 African Union (AU) member states, is one of the most ambitious regional integration initiatives spearheaded by African governments. For Nigeria, Africa's largest economy by GDP and population, the implementation of the AfCFTA holds transformative potential. However, the path to realizing this potential is fraught with challenges. These challenges are rooted in structural economic inefficiencies, institutional weaknesses, policy misalignments, and socio-political dynamics that complicate Nigeria's readiness and capacity to effectively implement the Agreement.

5.1 Institutional and Regulatory Weaknesses

Nigeria's trade governance system's widespread institutional and regulatory flaws are a major barrier to the country's successful AfCFTA implementation. Concerns exist on how national institutions and policies should be coordinated to meet the goals of the AfCFTA. Under the AfCFTA, Nigeria's industrial sector will be at risk due to regulatory and policy barriers, including the absence of an active national trade strategy and the current structure of certain trade-related organizations, such as the Nigeria Customs Service (NCS).⁵⁸ These are the so-called non-tariff trade obstacles, which obstruct commerce and industrial development and include onerous customs processes, excessive bureaucracy, and inconsistent regulatory frameworks. The

⁵⁵ UNCTAD, *Economic Development in Africa Report 2019: Made in Africa – Rules of Origin for Enhanced Intra-African Trade* (Geneva: UNCTAD 2019) 4.

⁵⁶ Brookings Institution, 'Strengthening Regional Value Chains in West Africa: The Role of RoO under AfCFTA' (Africa Growth Initiative Report, 2021).

⁵⁷ AU Commission & UNDP, *AfCFTA Futures Report 2022: Which Value Chains for a Made in Africa Revolution* (UNDP Publication 2022) 19.

⁵⁸ S J Ajayi-Kadir, 'Multilateral Trade Agreement and Nigerian Manufacturing Sector: A Study of the African Continental Free Trade Agreement' (Individual Research Project Submitted to the National Institute for Policy and Strategic Studies, Kuru, in Partial Fulfilment for the Award of the Member of the National Institute, mni 2020).

National Agency for Food and Drug Administration and Control (NAFDAC), the NCS, and the Standards Organization of Nigeria (SON) frequently function in silos, which results in uneven trade practices and policy fragmentation. Nigeria's capacity to comply with the regulatory alignment mandated by the AfCFTA norms is compromised by this fragmented approach.⁵⁹ The weight of the AfCFTA is likely to suffocate Nigeria's small companies and industrial sector if laws are not harmonized, customs procedures are not streamlined, and transparency is maintained.

Furthermore, the dispute resolution mechanism under AfCFTA is nascent and untested. Nigerian exporters may not have the means or institutional backing to seek recourse through the AfCFTA Dispute Settlement Body if they believe that customs officials in other African nations have treated them unfairly.⁶⁰ This undermines legal certainty and may deter businesses from engaging in intra-African trade under preferential terms.⁶¹ Furthermore, the prevalence of unofficial levies, and delays at ports compromise Nigeria's trade competitiveness. According to Transparency International, corruption in Nigeria's public sector significantly distorts economic outcomes and creates unequal access to markets.⁶² Efficient customs procedures and the elimination of rent-seeking behaviour are essential for the smooth implementation of AfCFTA's trade facilitation protocols.⁶³

5.2 Infrastructural Deficits

Significant infrastructural deficiencies exist in Nigeria, including poor digital connectivity, inconsistent power supplies, inadequate transit networks, and inadequate warships flying the Nigerian flag.⁶⁴ When combined, these disparities impede effective commerce and industrial growth in the nation's regional economic communities. In most cases, the absence of supporting structures rather than a shortage of commodities and services to sell reduces Nigeria's trade gains. Therefore, in order to facilitate the flow of commodities, lower costs, and improve industrial competitiveness, the nation must immediately address the infrastructure deficit.

The smooth flow of goods and services is essential for effective intra-African trade, but Nigeria has some of the highest transportation costs in the region, which reduces its competitiveness. According to the World Bank, one of the main obstacles to Nigeria's regional integration and trade facilitation is inefficient infrastructure.⁶⁵ Unless these deficits are addressed, the country will struggle to meet the logistical demands of a continental free trade area.

⁵⁹ E K Ogunleye, 'Institutional Preparedness and AfCFTA Implementation in Nigeria: A Regulatory Impact Assessment' (African Trade Policy Centre Working Paper No. 25. United Nations Economic Commission for Africa - UNECA 2021).

⁶⁰ O D Akinkugbe, 'Dispute Settlement under the African Continental Free Trade Area Agreement: A Preliminary Assessment' [2019] (28) *African Journal of International and Comparative Law*, 138-143

⁶¹ D Luke, 'Making the AfCFTA Work for Africa's Private Sector' (African Trade Policy Centre Working Paper, UNECA, 2021).

⁶² Transparency International, 'Corruption Perceptions Index 2022' <<https://www.transparency.org/en/cpi/2022/index/nga>> accessed 20 August 2025.

⁶³ H Wu, *Trade Facilitation in the Multilateral Trading System* (Routledge 2019) 7.

⁶⁴ O Awoyemi, 'African Continental Free Trade Agreement and Trade Facilitation in Nigeria: Issues and Prospects' (Individual Research Project Submitted to the National Institute for Policy and Strategic Studies, Kuru, in partial fulfilment for the award of the Member of the National Institute, mni 2021).

⁶⁵ World Bank, *Enhancing the Performance of Nigeria's Transport Sector: A Policy Note* (Washington, DC: World Bank 2020) 10.

5.3 Insecurity and Political Instability

The widespread insecurity in many parts of Nigeria, especially the North-East, North-West, and South-South, is another significant issue. In addition to interfering with economic activity, banditry, terrorism, herder-farmer conflicts, and insurgency have also made cross-border trade routes dangerous. These security issues jeopardize the potential gains from trade liberalization under the AfCFTA framework by discouraging investment, raising transaction costs, and limiting the flow of commodities. The problem is further made worse by the politicization of security responses and the lack of coordination among security institutions.⁶⁶

5.4 Undiversified Export

Another problem facing Nigeria is the lack of diversity in its export components. The problem is not so much that Nigeria's primary export to the rest of the world is oil, but rather that other Nigerian-made exports have difficulty fulfilling global quality standards and adhering to sanitary and phytosanitary regulations.⁶⁷ The dominance of oil exports is problematic in two ways. It diverts attention from other profitable items, and low oil output due to smuggling, vandalism, and theft of crude oil results in declining oil revenue and trade deficits that could get worse under the AfCFTA.⁶⁸ Furthermore, the influx of cheaper goods will further erode the nation's ability to trade and make it more difficult to revive local businesses that are in decline, particularly small and medium-sized businesses.

6. MEASURES ADOPTED BY THE GOVERNMENT OF NIGERIA TO MAXIMIZE THE BENEFITS OF AFCFTA

Nigeria's adoption of the African Continental Free Trade Area (AfCFTA) architecture has been accompanied by a mixture of declaratory acts, institutional creation, regulatory recalibration and selective domestic reform intended to capture the Agreement's benefits while managing the risks of liberalization. At the international-legal level, Nigeria deposited its instrument of ratification in December 2020, thereby signaling the State's international commitment to the AfCFTA regime; domestically, the Government has relied on a package of policy instruments⁶⁹ - a National Action/Coordination architecture, a National AfCFTA Strategy and Implementation Plan, a revised national trade policy, targeted trade-facilitation reforms (including the National Single Window project), selective tariff-schedule gazetting (Provisional Schedule of Tariff Concessions (PSTCs)), and targeted financial-market and payment-system initiatives, including the Pan-African Payment and Settlement System (PAPSS) adoption, were designed to establish the institutional, legal, and infrastructure frameworks necessary for Nigerians to engage in preferential trade across the continent.⁷⁰

Constitutional and doctrinal constraints condition Nigeria's legal responsiveness to treaty obligations. Nigeria's legal system follows the dualist model: ratification at international law

⁶⁶ International Crisis Group, 'Violence in Nigeria: Roots and Responses' (Africa Report No. 288) <<https://www.crisisgroup.org>> accessed 21 August 2025.

⁶⁷ Awoyemi (n 64).

⁶⁸ *Ibid.*

⁶⁹ UN Economic Commission for Africa, 'Nigeria Becomes 34th Country to Ratify AfCFTA Agreement' <<https://www.uneca.org/stories/nigeria-becomes-34th-country-ratify-afcfta-agreement?>> accessed 2 September 2025.

⁷⁰ *Ibid.*

does not automatically convert treaty obligations into municipal law; section 12 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) and long-standing jurisprudence require domestic enactment for treaties to be directly enforceable or to alter domestic legal rights and duties.⁷¹ For AfCFTA, this means that while Nigeria is bound at the international plane after ratification, many of the Agreement's operational requirements, including domestic implementation of tariff concessions, rules of origin administration, dispute-settlement mechanisms that require domestic procedural backing, and SPS/phytosanitary measures, must be enabled through specific domestic legislation, agency regulations, administrative instruments and intergovernmental coordination. The dualist constraint is therefore a structural legal barrier that the Government must manage either through legislative domestication or creative administrative measures that secure operational compliance without full statutory transplantation.⁷²

To overcome the coordination problem that domestication and implementation present in a federal, multi-agency environment, the Federal Government created the National Action Committee (NAC) and subsequently established the Nigeria AfCFTA Coordination Office as a secretariat and operational hub.⁷³ The NAC's mandate, to align ministries, departments and agencies (MDAs), the private sector, and sub-national actors; to develop a national strategy; and to cascade capacity-building and rules-of-origin (RoO) competence across stakeholders, reflects good public-law practice for treaty implementation: it concentrates programme management, research capability, and stakeholder engagement under a cabinet-level chair (the Minister of Industry, Trade and Investment) while delegating technical tasks to a secretariat. Nevertheless, the NAC's effectiveness depends on stable statutory funding, formal legal authority to bind MDAs, and powers to require regulatory change; absent explicit statutory delegation, the NAC's outputs remain administrative instruments vulnerable to political change.⁷⁴

Policy instruments have been deployed in two complementary clusters: (i) trade policy & tariff instruments and (ii) trade facilitation & operational infrastructure. On the tariff side, Nigeria has taken the critical step of gazetting its Provisional Schedule of Tariff Concessions (PSTCs), a procedural requirement under the AfCFTA Protocol on Trade in Goods that gives domestic legal effect (subject to domestic law) to the tariff offers each State Party intends to implement and signals regulatory predictability to exporters/importers.⁷⁵ Nigeria's gazetting in April 2025 formally transmitted its schedule to the AfCFTA Secretariat and publicly signalled that it will apply zero duties on the bulk of tariff lines in accordance with the Agreement modalities (that is, elimination on 90% of tariff lines subject to transitional timelines), while retaining categories of sensitive and excluded products consistent with the Protocol. The gazetting is a necessary legal step: it reduces uncertainty, enables customs to program tariff-treatment rules, and allows exporters to plan; but the PSTCs must be matched with administrative systems for proof of

⁷¹ O Raegebunam and O Iroanya, 'Section 12 of the 1999 Constitution of Nigeria and Treaty Implementation: A Legal Critique' [2023] (5)(2) *International Review of Law and Jurisprudence* 12-17.

⁷² *Ibid.*

⁷³ Nigeria AfCFTA Coordination Office, 'About National Action Committee' <<https://ngrafta.gov.ng/about-us>> accessed 3 September 2025.

⁷⁴ *Ibid.*

⁷⁵ Federal Ministry/Press Reports re: Nigeria's PSTCs: Nigeria Gazettes AfCFTA Provisional Schedule of Tariff Concessions, mid-April 2025 (reports by IT-RC, Guardian, Business Insider and official ministry statements)

origin, compliance verification and dispute handling if preferential tariffs are to be realized in practice.⁷⁶

Tariff liberalization under AfCFTA is not absolute; Nigeria has maintained import-prohibition lists and retained special protection for selected agricultural and consumer items. The continued existence of Nigeria's 25-item import prohibition list (live/dead poultry, refined vegetable oils, some sugars, etc.) and other sectoral restrictions creates legal and operational friction with the AfCFTA preferential framework.⁷⁷ Practically, States may reconcile these by classifying sensitive lines into Category B (7 percent sensitive) and Category C (3% exclusions) with phased implementation timetables, an approach reflected in the AfCFTA modalities, but Nigeria's domestic bans and sanitary/health restrictions require careful alignment with AfCFTA RoO rules and with WTO obligations to avoid inconsistency and retaliation risks. Therefore, the legal design Nigeria has chosen is to combine tariff liberalization with carefully tailored exclusions and regulatory controls; the success of that design turns on transparent lists, predictable phase-out timetables and clear administrative guidance to customs officials and the private sector.⁷⁸

Operationally, Nigeria has prioritized trade facilitation and digital infrastructure. The National Single Window project, a federal initiative seeking to integrate clearance data across MDAs and move declarations and approvals onto a single electronic platform, directly addresses the non-tariff cost of trade (paperwork, multiple agency stops, transit delays) and is critical to allow preferential tariffs to translate into front-door benefits for exporters and importers.⁷⁹ The Central Bank of Nigeria's (CBN) measures to incorporate PAPSS into domestic payments guidance (including certification and documentation requirements for PAPSS transactions) and the rolling engagement of commercial banks to adopt the platform remove a key financial friction, the need to source hard currency via third-party corridors, and can materially lower transaction costs for intra-African trade. Both the Single Window and PAPSS adoption are measures in the 'enabling infrastructure' category that convert tariff offers into real, cross-border trade flows.⁸⁰

7. CONCLUSION

With an emphasis on Nigeria specifically, the study looked at how important rules of origin are to the African Continental Free Trade Area's (AfCFTA) success. While the AfCFTA represents a historic industrialization, and self-sufficiency within Africa, the efficacy of its implementation is intrinsically tied to the design, clarity, and enforcement of its RoO framework. RoO are not mere technical instruments but foundational mechanisms that define the integrity of a free trade area. Properly designed, they prevent trade deflection, encourage local value addition, stimulate regional value chains, and promote industrial transformation. For Nigeria, Africa's largest economy, these rules hold particular significance, given its informal trading networks, customs challenges, and evolving industrial base. Yet, poorly framed or excessively stringent RoO risk entrenching barriers, discouraging investment, and undermining the very objectives of AfCFTA.

⁷⁶ *ibid*

⁷⁷ Nigerian Customs Service, 'Import Prohibition List' <https://customs.gov.ng/?page_id=3075&utm> accessed 10 September 2025.

⁷⁸ *Ibid.*

⁷⁹ Central Bank of Nigeria press guidance on PAPSS adoption (CBN press release, April 28, 2025) and reporting on PAPSS integration.

⁸⁰ *Ibid.*

8. RECOMMENDATIONS

To maximize the success of the AfCFTA in Nigeria, there is need for Nigerian government to recalibrate both policy and institutional approaches to RoO. Simplifying and harmonizing origin requirements across sectors, introducing digital certification systems, and enhancing customs capacity through training and technology adoption would significantly reduce compliance bottlenecks. Moreover, Nigeria must integrate RoO implementation into a broader industrial policy agenda that prioritize infrastructure development, supply chain strengthening and SME support. By ensuring that RoO are not merely instruments of trade control but also enablers of inclusive industrialization, Nigeria can transform potential barriers into drivers of competitiveness. A strategic focus on these reforms would allow Nigeria not only to benefit more fully from AfCFTA but also to position itself as a continental leader in shaping trade governance that is both development-oriented and growth-enabling.

The Nigerian government should put in place an integrated "readiness plus rules" program that emphasizes institutional consolidation, digitization, and targeted firm support in order to remove the obstacles to the successful implementation of the AfCFTA in Nigeria. Concretely, establish a legislatively empowered AfCFTA coordination unit within the Federal Ministry of Industry, Trade and Investment to harmonize Nigerian Customs Service, SON, NAFDAC and trade promotion activities; accelerate single-window and digital certificate of origin deployment piloted through ECOWAS; and fund sectoral accelerator schemes that provide matching grants for SPS compliance, and RoO training for export consortia.