



THE LEGAL ARCHITECTURE OF RULES OF ORIGIN UNDER THE AFRICAN CONTINENTAL FREE TRADE AREA: AN ASSESSMENT OF NIGERIA'S FRAMEWORK

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ABSTRACT

Rules of origin (RoO) are the legal criteria that determine whether a product qualifies for preferential tariff treatment under a trade agreement. They are the operational core of the African Continental Free Trade Area (AfCFTA), yet their effectiveness depends entirely on the domestic legal framework of each member state. This article therefore examines the legal architecture governing RoO administration in Nigeria. It analyses Nigeria's national legislative framework, including the Nigeria Customs Service Act 2023, the Federal Competition and Consumer Protection Act 2018 and cognate legislation, alongside the regional and international instruments, namely the AfCFTA Agreement and Annex 2 on Rules of Origin, the ECOWAS Protocol on Originating Products, the ECOWAS Customs Code 2017 and the WTO Agreement on Rules of Origin. Using those instruments as comparative benchmarks, the article assesses the strengths and weaknesses of Nigeria's framework. It finds that while the NCSA 2023 achieves structural alignment with the AfCFTA's origin determination principles and Nigeria's ECOWAS experience provides a useful institutional foundation, two critical weaknesses undermine implementation: the failure to domesticate the AfCFTA Agreement as required by section 12(1) of the 1999 Constitution, and the endemic corruption within the Nigerian Customs Service that renders border enforcement inadequate. The article concludes with recommendations for legislative and institutional reform.

KEYWORDS: Rules of Origin; AfCFTA; Nigeria Customs Service Act; Legal Framework

1. INTRODUCTION

The African Continental Free Trade Area (AfCFTA) was established by the Agreement signed in Kigali in March 2018, and it came into force in May 2019. It is the centrepiece of the African Union's Agenda 2063 and seeks to create a single continental market across 54 member states.¹ Central to its operation are Rules of Origin (RoO), which are legal criteria that determine whether a product qualifies for preferential tariff treatment under the Agreement.² Nigeria is Africa's largest economy and a signatory to the Agreement establishing the AfCFTA. However, being a signatory to a regional treaty instrument does not automatically give it a force of law. By virtue of the

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¹ Agreement Establishing the African Continental Free Trade Area 2019, art 3; African Union, *Agenda 2063: The Africa We Want* (AU Commission 2015) 1.

² Protocol on Trade in Goods to the Agreement Establishing the AfCFTA 2019, Annex 2 on Rules of Origin, art 1.



Constitution of the Federal Republic of Nigeria 1999 (as amended), section 12(1), a treaty entered into by Nigeria requires an act of domestication by the National Assembly before that treaty can have the force of law in the country. This therefore implies that the effective RoO administration in Nigeria is conditioned by a dualist constitutional order under which treaty obligations require an Act of the National Assembly to become domestically enforceable.³ Where that legislative step has not been taken, implementing the AfCFTA Agreement becomes legally impossible.⁴

2. RULES OF ORIGIN

Rules of Origin are the legal criteria by which the nationality of a product is determined for purposes of international trade. The significance of this determination lies in a foundational distinction that preferential trade law creates: goods from states party to a trade agreement attract lower tariffs than goods from non-party states. RoO decide on which side of that distinction a given product falls. Without them, a producer in a non-member country could route goods through a member state, absorbing minimal processing costs in exchange for substantial tariff savings — a practice known as trade deflection or transshipment.⁵ There are two principal methods of conferring origin across trade agreements. The first is the wholly obtained criterion. This applies to primary commodities and goods manufactured entirely from materials sourced within the trade area. The second is the substantial transformation criterion. This method governs goods that incorporate non-originating materials and asks whether those materials have been sufficiently processed within a member state to justify treating the final product as locally originating. Substantial transformation is assessed by reference to one of three methodologies: a change in tariff classification, a minimum value-added threshold or compliance with a specific production process.⁶

3. NIGERIA'S NATIONAL LEGISLATIVE FRAMEWORK

3.1 The Constitutional Dimension: Section 12 of the 1999 Constitution

The starting point for assessing Nigeria's legal capacity to implement AfCFTA obligations is the CFRN 1999 (as amended). Section 12 embodies the dualist principle: a treaty to which Nigeria is a party does not, by reason of ratification alone, have the force of law in Nigeria. It acquires domestic legal effect only upon enactment by the National Assembly. The Supreme Court affirmed this position in *Abacha v Fawehinmi*,⁷ holding that the African Charter on Human and Peoples' Rights, though ratified, became enforceable in Nigeria only after the National Assembly enacted it into domestic law.

³ CFRN 1999 (as amended), s 12; *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228.

⁴ 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.

⁵ A Estevadeordal and K Suominen, *Rules of Origin in Preferential Trading Arrangements: A Global Assessment* (Inter-American Development Bank 2004) 57.

⁶ S Inama, *Rules of Origin in International Trade* (Cambridge University Press 2022) 244.

⁷ (2000) 6 NWLR (Pt 660) 228, 285 per Ogundare JSC.



This constitutional position has direct and significant consequences for AfCFTA implementation. Nigeria ratified the Agreement in December 2020. However, the operational requirements of the Agreement, such as the administration of tariff concessions, the enforcement of documentary procedures for origin claims and the domestic legal consequences of origin fraud, require specific statutory authority. Without that authority, customs officers at the Nigerian border lack a secure legal basis for decisions made by reference to AfCFTA protocols alone. No amount of executive policy or administrative circular can supply what the Constitution requires Parliament to enact.⁸

3.2 The Nigeria Customs Service Act 2023

The Nigeria Customs Service Act (NCSA) 2023 seeks to reform the administration and management of customs and excise in Nigeria to aid trade facilitation and improve economic growth.⁹ The NCS Act establishes the Nigerian Customs Service¹⁰ as a legal entity to be governed by the Board under the supervision of the Minister of Finance.¹¹ The NCS Act also seeks to bring customs and excise management in Nigeria in tune with contemporary operations and international best practices and thereby facilitate international trade as well as provide a standard legal corpus for customs administration.

The NCS Act establishes the rules of origin (RoO)¹² for the purpose of applying preferential and non-preferential rules.¹³ Based on the NCS Act, goods wholly obtained in a single country or territory shall be regarded as having their origin in that country or territory, while goods whose production involves more than one country or territory, the country or territory where they underwent their last substantial transformation shall be deemed as the country of origin.¹⁴ This is particularly important as, apart from using the same to determine the amount of customs duties to be paid, it is necessary to determine and apply relevant restrictions on the importation of goods into the country. This, in effect, will maintain the territorial integrity of the nation and avoid the dumping of substandard products in the nation.¹⁵ A good is deemed ‘substantially transformed’ where it becomes a new and different product as a result of manufacturing operations.¹⁶

The NCS Act provides that in order to benefit from preferential tariff rates or non—tariff preferential measures, goods must originate in a country or territory with which the Government has concluded a preferential trade agreement or accords preferential treatment on unilateral basis; and the rules of preferential origin shall be set out in applicable preferential trade agreements and

⁸Raegebunam and Iroanya (n 4) 18.

⁹ Nigeria Customs Service Act (NCSA) 2023, s 3.

¹⁰ *ibid*, s 1.

¹¹ NCS Act 2023, s 7.

¹² NCS Act 2023, s 79.

¹³ *ibid*, s 80.

¹⁴ *ibid*, s 79(1) and 79(3).

¹⁵ S Augustine, ‘Understanding the New Customs Act 2023 and Its Implication on Trade’ <<https://primetimereporters.com/2023/12/understanding-the-new-customs-act-2023-and-its-implication-on-trade/>> accessed 8 May 2025.

¹⁶ NCS Act 2023, s 79(4).



in laws ratifying and enforcing those trade agreements or establishing preferential treatment on a unilateral basis.¹⁷ Goods that originate from members of the Economic Community of West African States (ECOWAS) and other countries to which the Nigerian Government has concluded a preferential trade agreement shall be subject to the preferential rules of origin,¹⁸ while non-preferential rules of origin shall apply to other goods, except where Nigeria has applicable international agreement or unilateral action with the government of the originating country.¹⁹

The NCS Act, section 82 provides that when an origin has been indicated in the customs declaration, the Service may require the declarant to prove the origin of the goods; documentary evidence of origin shall be a declaration of origin in English language by the manufacturer or exporter or a certificate issued by a designated authority in the country of production; declarations and certificates of origin may be verified under mutual assistance agreements between the Service and other customs administrations of other countries and by other means; and where the declarant provides proof of origin of goods, the Service may, in the event of reasonable doubt, request for any additional evidence needed in order to prove origin.²⁰

In addition, the NCS Act makes innovative business facilitation provisions by providing for authorised economic operators in addition to customs representatives provided under the old law. Thus, an authorised economic operator may either be designated a Customs Simplification Authorised Economic Operator or a Security and Safety Authorised Economic Operator.²¹ The principal aim of this is to simplify procedures in relation to clearance and certification or safety and security procedures as provided by the NCS Act and address administrative hiccups in transaction cross-border business.

3.3 The Federal Competition and Consumer Protection Act 2018

The Federal Competition and Consumer Protection Act (FCCPA) 2018 regulates market competition and consumer protection in Nigeria. Its relevance to RoO administration arises in two respects. First, the FCCPA prohibits agreements that restrict or distort competition and requires accurate product labelling, including origin information. These provisions complement the enforcement of RoO by ensuring that imported goods claiming preferential treatment do not misrepresent their origin and thereby gain an unfair competitive advantage over domestically produced goods.²²

Second, the Act creates the Federal Competition and Consumer Protection Commission (FCCPC) with broad investigative and enforcement powers.²³ In the AfCFTA context, the FCCPC is

¹⁷ *ibid*, s 80(2) and 80(3).

¹⁸ NCS Act 2023, s 80(4).

¹⁹ *ibid*, s 81.

²⁰ *ibid*, s 82(1)-(4).

²¹ *ibid*, s 108.

²² Federal Competition and Consumer Protection Act 2018, ss 1-3; Federal Competition and Consumer Protection Commission, 'About FCCPC' <<https://fccpc.gov.ng>> accessed 5 October 2025.

²³ FCCPA 2018, s 3.



institutionally positioned to investigate origin fraud, particularly where falsely labelled goods obtain preferential tariff access and harm domestic producers through unfair competition. This alignment between the FCCPA's mandate and the integrity requirements of RoO administration represents an underutilised asset in Nigeria's trade compliance system.²⁴

3.4 The Customs Duties (Dumped and Subsidised Goods) Act 1958

The Customs Duties (Dumped and Subsidised Goods) Act 1958 empowers the Federal Government to impose special duties on goods that are dumped in Nigeria or that have benefited from a foreign subsidy, subject to consistency with Nigeria's GATT obligations. Goods are considered dumped where their export price is lower than their fair market price in the country of origin. The power of determination rests with the President of Nigeria.²⁵ Without enforceable RoO, goods originating outside the AfCFTA zone can enter Nigeria through member states under preferential tariffs, effectively circumventing the anti-dumping protection this legislation provides. Section 7 of the Act empowers the Director of Customs and Excise to require importers to declare the origin of goods and to furnish proof. Where such proof is not provided, the Director may determine the country of origin by administrative presumption.²⁶ This statutory mechanism is a critical enforcement tool but requires coordination with the NCSA 2023 to operate coherently within the AfCFTA framework.²⁷

3.5 Maritime and Waterways Legislation

Three further statutes bear on Nigeria's capacity to implement AfCFTA's RoO requirements by shaping the trade infrastructure within which origin administration operates. The Nigerian Maritime Administration and Safety Agency Act 2007 establishes NIMASA as the primary regulator of maritime safety and commercial shipping,²⁸ with enforcement powers extending to the inspection of vessels and cargo documentation.²⁹ NIMASA's oversight role, as empowered by the Act, includes the inspection of vessels and cargo documentation³⁰ and the investigation of offences related to maritime operations.³¹ Through these powers, NIMASA is able to address fraudulent practices such as transshipment fraud and origin misdeclaration, which threaten the integrity of Rules of Origin (RoO) systems. The NIMASA Act further provides for penalties against false statements in shipping documents³² and evasion of fees or levies.³³ These provisions reinforce NIMASA's capacity to safeguard the authenticity and compliance of maritime trade documentation.

²⁴ G Erasmus, 'The Role of Rules of Origin in African Trade Integration' (Tralac Trade Brief 2020) 7.

²⁵ Customs Duties (Dumped and Subsidised Goods) Act, s 4.

²⁶ *ibid*, s 7.

²⁷ *ibid*, s 7.

²⁸ Nigerian Maritime Administration and Safety Agency Act 2007, s 3.

²⁹ NIMASA Act 2007, s 23(5)(b) and (c).

³⁰ *ibid*, s 23(5)(b)-(c).

³¹ *ibid*, s 23(5)(d).

³² *ibid*, s 57.

³³ *ibid*, s 56.



The Coastal and Inland Shipping (Cabotage) Act 2003 expressly prohibits vessels other than those wholly owned, built, and manned by Nigerian citizens, and registered in Nigeria, from engaging in the domestic coastal carriage of cargo and passengers within Nigerian waters.³⁴ The Act further establishes a framework for waivers and restricted licensing of foreign vessels only where suitable Nigerian vessels are unavailable, subject to strict ministerial oversight and time limits.³⁵ By prioritising Nigerian ownership, construction and crewing of vessels, and by instituting the Cabotage Vessel Financing Fund to support indigenous operators, the Act embodies a legislative philosophy of economic nationalism and the promotion of local value chains. This is consistent with broader regional objectives such as those embedded in the AfCFTA RoO. The National Inland Waterways Authority Act 1997 complements this by regulating inland waterway navigation, thereby reducing transport costs for producers in inland regions.

4. REGIONAL AND INTERNATIONAL LEGAL FRAMEWORK

4.1 The AfCFTA Agreement and Annex 2 on Rules of Origin

The African Continental Free Trade Area Agreement (AfCFTA) is a mega-regional trade agreement that aims to create a single market for goods and services, and to facilitate investment and the movement of persons in order to deepen economic integration in Africa. The AfCFTA Agreement has a wide scope. It covers trade in goods and services, investment, intellectual property rights and competition policy. The AfCFTA Agreement has general and specific objectives. The general objectives are, *inter alia*, the creation of a single market for goods, services, and the movement of persons and investments among African countries; the creation of a liberalised market for goods and services based on successive rounds of negotiations; laying the foundation for the establishment of a Continental Customs Union; and enhancing the competitiveness of the economies of African states, both within the continent and the global market.³⁶ Moreover, the AfCFTA aspires towards a better coordination of African trade regimes and the elimination of challenges associated with multiple and overlapping trade agreements across the continent.³⁷ The general objectives of the agreement also include socioeconomic development, gender equality and structural transformation of the State Parties.³⁸

The specific objectives mandate the parties to progressively eliminate tariffs and non-tariff barriers (NTBs) to trade in goods and liberalise trade in services.³⁹ State Parties shall cooperate on

³⁴ Coastal and Inland Shipping (Cabotage) Act 2003, s 3.

³⁵ *ibid*, s 9.

³⁶ Agreement Establishing the African Continental Free Trade Area 2019, art 3(h).

³⁷ J Gathii, 'African Regional Trade Agreements as Flexible Legal Regimes' [2009] (35) *North Carolina Journal of International Law and Commercial Regulation*, 571–666; M Busch, 'Overlapping Institutions, Forum Shopping, and Dispute Settlement in International Trade' [2007] (61)(4) *International Organization*, 735–761.

³⁸ AfCFTA Agreement 2019, art 3(e); C Gamage and M Momodu, 'The Economic Empowerment of Women in Africa: Regional Approaches to Gender Sensitive Trade Policies' [2020] (1) *African Journal of International Economic Law*, 1–40.

³⁹ AfCFTA Agreement 2019, arts 4(a) and (b); R Simo, 'Trade in Services in the African Continental Free Trade Area: Prospects, Challenges and WTO Compatibility' [2020] (23)(1) *Journal of International Economic Law*, 65–95.



investment, intellectual property rights and competition policy,⁴⁰ and establish a mechanism for the settlement of disputes concerning their rights and obligations.⁴¹ The State Parties shall also maintain an institutional framework for the implementation and administration of the AfCFTA.⁴²

In terms of rules of origin, the AfCFTA adopts a similar approach to the rules of origin as those used in various regional trade areas, such as the EU Economic Partnership Agreements.⁴³ Under article 13 of the AfCFTA Agreement, goods shall be eligible for preferential treatment under this Protocol, if they are originating in any of the State Parties in accordance with the criteria and conditions set out in Annex 2 on Rules of Origin, and in accordance with the Appendix to be developed on General and Product Specific Rules. Only products that can be demonstrated to be of the economic origin of one or more state parties of the AfCFTA are eligible for preferences. This approach requires that products are either wholly obtained or significantly transformed in an AfCFTA state.⁴⁴ Products that are referred to as being wholly obtained in the country of origin usually consist only of local inputs, or, in the case of goods extracted from the soil or seabed, or agricultural products, are extracted, grown, harvested, or otherwise obtained locally.

To claim origin status and benefit from preferential market access under the AfCFTA, a product must be able to demonstrate that any non-AfCFTA sourced materials have undergone significant transformation within the AfCFTA. The provision under Article 4(b) in conjunction with Article 6 of Annex 2 to the AfCFTA set specific criteria that constitute a substantial transformation for each product and can be based on one or more methodologies: adding value to the product, working with non-originating material content, change in tariff heading through processing, or undertaking specific processes.⁴⁵ If a product obtains local origin status by being wholly obtained⁴⁶ or substantially transformed,⁴⁷ it must be nevertheless ensured that the processing undertaken goes beyond the processing listed as ‘not conferring origin’.⁴⁸ These provisions ensure that simple operations do not establish origin. The criterion ‘wholly obtained or produced’ is mainly used for natural products and for goods made from natural products which are obtained entirely in one country or area, comprising products extracted or harvested in a country and live animals born, raised or hunted there. The scope of wholly obtained or produced products is normally interpreted

⁴⁰ AfCFTA Agreement 2019, art 4(c); T Büthe and V K Kigwiru, ‘The Spread of Competition Law and Policy in Africa’ [2020] (1) *African Journal of International Economic Law*, 41–83; T Adebola, ‘Mapping Africa’s Complex Regimes: Towards an African Centred AfCFTA Intellectual Property (IP) Protocol’ [2020] (1) *African Journal of International Economic Law*, 233–290.

⁴¹ AfCFTA Agreement 2019, art 4(f); 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*, 138–158.

⁴² AfCFTA Agreement 2019, art 4(g).

⁴³ Economic Partnership Agreement between the European Union and its Member States of 16.09.2016, of the one part, and the SADC EPA States, of the other part, OJ L 250.

⁴⁴ Annex 2 on the Rules of Origin of the AfCFTA, art 4.

⁴⁵ Annex 2 on the Rules of Origin of the AfCFTA, art. 6.

⁴⁶ *Ibid*, art 5.

⁴⁷ *Ibid*, art 6; Appendix IV of the AfCFTA.

⁴⁸ *Ibid*, art 7.



in a very strict way, insofar as the addition of imported parts or materials excludes such products from being wholly obtained or produced.

With regard to goods of the sea fishing industry under article 5, Annex 2 on the Rules of Origin of the AfCFTA, the provisions on wholly obtained or produced goods are supplemented by definitions of what constitutes a vessel and a factory ship of a State Party.⁴⁹ Article 6 of AfCFTA Annex 2 on Rules of Origin states that in order for a product to be considered sufficiently worked or processed, one of the following criteria has to be fulfilled: (a) Value added; (b) non-originating material content; (c) change in tariff heading; or (d) specific processes.

In order to ensure that only manufacturing processes that fall within the range of substantial transformation count as origin conferring processes, Annex 2 on Rules of Origin in its article 7 contains a list of operations which are considered to have only minor effects on the final goods. These minor operations do not confer origin even where the applicable rule included in the list of product specific rules of origin would have been satisfied. According to Annex 2, Article 7(3), operations are considered simple when neither special skills, nor machines, apparatus nor tools especially produced or installed for those operations are required for their performance or when those skills, machines, apparatus or tools do not contribute to the product's essential characteristics or properties. Agricultural products whether or not processed in any way, obtained or partially obtained from Food Aid or monetisation or similar assistance measures, including arrangements based on non-commercial terms, shall not be considered as originating in a State Party.⁵⁰

Another approach to origin status of products exists in the case of cumulation of origin under article 8 of the Annex 2 on the Rules of Origin of the AfCFTA, where state parties jointly fulfil the rules of origin criteria and thereby reduce the burden on individual producers. Inputs sourced from and originating in other member states then count as local inputs when further processed.⁵¹ Producers in the State Parties are allowed to use raw materials or semi-finished goods originating in any State Party for their working or processing as if these inputs originate in their own State Party, that is, where the final processing or manufacturing takes place.⁵² This kind of cumulation is known as regional or diagonal cumulation. Article 8(3) of Annex 2 on the Rules of Origin of the AfCFTA provides for cumulation of manufacturing operations among State Parties by indicating that the production in a given State Party is treated as if it took place in the State Party where the final product is produced. Cumulation of manufacturing operations is commonly known as full cumulation. Article 8(4) allocates the origin of products which were further manufactured to the State Party where the last manufacturing process took place, provided that the last working or processing operations exceed the insufficient operations listed in Article 7 of Annex 2. AfCFTA

⁴⁹ Annex 2 on the Rules of Origin of the AfCFTA, art 5, 1(h) and (i).

⁵⁰ *ibid*, art 7 (2).

⁵¹ Annex 2 on the Rules of Origin of the AfCFTA, art 8(2).

⁵² *ibid*.



product-specific RoOs adopt a hybrid approach that includes product-based rules. That is, they do not follow a general approach, for example, of applying a uniform percentage to the value content criterion, as this would make them restrictive.

4.2 Protocol Relating to the Definition of the Concept of Products Originating from Member States of the Economic Community of West African States, 2003

Protocol A/P1/1/03 of the Economic Community of West African States (ECOWAS) defines the concept of ‘originating products’ within the ECOWAS region for the purpose of the ECOWAS Trade Liberalization Scheme (ETLS). This protocol outlines the rules of origin, specifying when a product is considered to be from a member state and thus eligible for preferential treatment within the ETLS, which allows for the free circulation of certain goods within the region. Article 2 of this Protocol underlines the rules of origin of community goods. Under this article, goods shall be considered as originating from Member States if: a) They have been wholly produced in Member States, in accordance with the provisions of Article 3 of this protocol; b) They have been produced in Member States but contain raw materials which were not wholly obtained from Member States, provided that such materials have undergone operations and processes that confer Community origin, as defined in Article 4 of this protocol.⁵³ Originating products consisting of materials wholly produced or sufficiently transformed in one or several Member States is considered as products originating from the Member State in which the last processing or transformation took place, inasmuch as the processing or transformation carried out there exceeds the processing and transformation defined in Article 5 of this protocol.⁵⁴

Article 3 of the Protocol provides for goods wholly produced in Member States. The following products are regarded as wholly produced in the Member States: a) Live animals born and raised within the Member States. b) Mineral products extracted from the ground, sub-soil or sea bed of Member States. c) Vegetable products harvested within the Member States. d) Products obtained from animals living or raised in Member States. e) Products obtained by hunting or fishing within the Member States. f) Products obtained from the sea, rivers and lakes within the Member States by vessels belonging to the Member States g) Products manufactured aboard ship factories belonging to Member States, exclusively from the products referred to in paragraph (f) of this Article. h) Used articles fit only for the recovery of raw materials, provided that such articles have been collected from users within the Member States. i) Scrap and waste resulting from manufacturing operations within Member States. j) Goods produced from the material listed in paragraphs (b) to (i) of this article, used alone or mixed with other materials, provided that they

⁵³ Protocol Relating to the Definition of the Concept of Products Originating from Member States of the ECOWAS 2003, art 2(1).

⁵⁴ *ibid*, art 2(2).



represent at least 60% of the total quantity of raw materials used. k) Electric energy produced in the Member States.⁵⁵

Article 4 provides list of operations and processes considered as sufficient to support a claim of origin from a Member State. Under this article, where goods are not wholly produced in Member States and where their production requires the exclusive use of materials which are to be classified under a different tariff sub-heading from that of the product; The above rule shall be accompanied by a list of exemptions mentioning the cases where the change in the subheading is not a determining factor, or imposing additional conditions. The list shall be established in by a Regulation of the Council of Ministers; or goods are not wholly produced in Member States and where their production requires the use of materials which have received a value-added of at least 30% of the ex-factory price of the finished goods. Goods transformed within the framework of economic or suspensive Customs regimes or certain special regimes involving the suspension or partial or total exemption from Customs duties on inputs are in no case considered as originating products.⁵⁶

The Protocol requires proof of the Community origin of goods to be supported by a certificate of origin stating the conditions set out in the protocol.⁵⁷ However, a certificate of origin is not required for agricultural and livestock products as well as handmade articles or articles produced without the use of tools, instruments or implements directly operated by the manufacturer. In the event that the origin of a product is contested, the Member State contesting the Community origin of the product is required, on its own initiative or that of any other party concerned, bring the issue to the attention of the competent authority in the issuing country; the exporting Member State is also required, within a period of forty-five (45) working days, to furnish all necessary information on the conditions under which the contested certificate was issued; and products whose origin is in dispute is not to be denied the advantages granted to originating products, provided that the importer deposits an amount as guarantee for the duties and taxes payable in the importing Member State.⁵⁸

4.3 ECOWAS Customs Code 2017

The ECOWAS Community Customs Code is a set of rules and procedures enacted by the community or authorities of ECOWAS Member States and generally applicable to tariff and other common policy measures in relation to trade in goods traded between the ECOWAS Community and third parties as well as among Member States. The rules of origin under the ECOWAS Customs Code the conditions for the acquisition of origin. Under the Customs Code, the rules of origin

⁵⁵ Protocol Relating to the Definition of the Concept of Products Originating from Member States of the ECOWAS 2003, art 3(1).

⁵⁶ *ibid*, art 7.

⁵⁷ Protocol Relating to the Definition of the Concept of Products Originating from Member States of the ECOWAS 2003, art 10.

⁵⁸ *ibid*, art 13.



comprise non preferential and preferential rules.⁵⁹ Non-preferential rules of origin are established by community regulation, national legislation or international conventions for general application with objective of attaining certain trade policy objectives; while the preferential rules of origin are established by community regulation or in accordance with trade agreements to facilitate community trade with certain countries or member states in the same community space.⁶⁰

Under the ECOWAS Customs Code, article 16, when the origin of goods is declared in a customs declaration in line with customs laws, customs authorities may ask the declarant to provide evidence of the goods' origin. However, documentary proof is only required when necessary for applying preferential tariffs, economic or trade measures set either unilaterally or through bilateral or multilateral agreements, or for reasons of public order or health. If origin is verified under customs or other specific ECOWAS legislation, and the authorities have reasonable doubt, they may request further documentation to confirm that the origin complies with the applicable legal rules. Additionally, a document verifying origin may be issued within the ECOWAS when required by trade practices, based on the origin rules of the destination country or any acceptable method that identifies where the goods were entirely produced or last substantially transformed.⁶¹

5. WORLD TRADE ORGANISATION AGREEMENT ON RULES OF ORIGIN 1995

The WTO Agreement on Rules of Origin was adopted in 1994 at Marrakesh as part of the final results of the Uruguay Round of Multilateral Trade Negotiations (MTN). The WTO Agreement on Rules of Origin is divided into four Parts, containing nine Articles, and two Annexes. The Agreement on Rules of Origin aims at harmonization of non-preferential rules of origin, and to ensure that such rules do not themselves create unnecessary obstacles to trade. The Agreement sets out a work programme for the harmonization of rules of origin to be undertaken after the entry into force of the World Trade Organization (WTO), in conjunction with the World Customs Organization (WCO). Article 1 of the Agreement defines rules of origin as those laws, regulations and administrative determinations of general application applied to determine the country of origin of goods except those related to the granting of tariff preferences. Thus, the Agreement covers only rules of origin used in non-preferential commercial policy instruments, such as MFN treatment, anti-dumping and countervailing duties, safeguard measures, origin marking requirements and any discriminatory quantitative restrictions or tariff quotas, as well as those used for trade statistics and government procurement. It is, however, provided that the determinations made for purposes of defining domestic industry or 'like products of domestic industry' shall not be affected by the Agreement.

The Agreement on Rules of Origin insists that the rules of origin that the WTO members apply to imports and exports should not be more stringent than the rules of origin they apply to determine

⁵⁹ ECOWAS Customs Code 2017, title 1, art 15.

⁶⁰ ECOWAS Customs Code 2017, title 1, art 15.

⁶¹ *ibid*, art 16(1)-(4).



whether a good is domestic or not.⁶² In other words, the rules of origin to determine whether or not a good is of domestic origin should be either as stringent or more stringent than the rules of origin applied to exports and imports. In any case, origin rules applied to determine whether a product is of domestic origin or not would have far reaching implications for commercial policy.

Taking into account the aim of all Members to achieve, as a result of the harmonization work programme set out in Part IV of the Agreement, the establishment of harmonized rules of origin, Members are required to ensure, upon the implementation of the results of the harmonization work programme, that they apply rules of origin equally for all purposes as set out in Article 1; under their rules of origin, the country to be determined as the origin of a particular good is either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out; the rules of origin are administered in a consistent, uniform, impartial and reasonable manner; and all information which is by nature confidential or which is provided on a confidential basis for the purpose of the application of rules of origin is treated as strictly confidential by the authorities concerned, which shall not disclose it without the specific permission of the person or government providing such information, except to the extent that it may be required to be disclosed in the context of judicial proceedings.⁶³

The Agreement establishes a Committee on Rules of Origin within the framework of the WTO, open to all WTO Members. It is to meet at least once a year and is to review the implementation and operation of the Agreements.⁶⁴ A Technical Committee on Rules of Origin is created under the auspices of the World Customs Organization (formerly the Customs Cooperation Council). Its main functions are (a) to carry out the harmonization work; and (b) to deal with any matter concerning technical problems related to rules of origin. It is to meet at least once a year. Membership is open to all WTO Members; other WCO members and the WTO Secretariat may attend as observers.⁶⁵ Article 5(1) of the WTO Agreement on Rules of Origin requires each Member to provide to the Secretariat, within 90 days after the date of entry into force of the WTO Agreement for it, its currently applicable rules of origin, judicial decisions and administrative rulings of general application relating to rules of origin. The Secretariat circulates to all Members lists of the information received and available to them.

As a broad principle the WTO Agreement on Rules of Origin under article 9, maintains that the country to be determined as the origin of a particular good should be either the country where the good has been wholly obtained or, when more than one country is involved, the country where last

⁶² WTO Agreement on Rules of Origin 1994, art 2(d); *United States–Rules of Origin for Textiles and Apparel Products*, WT/DS 243, 11 January 2002.

⁶³ WTO Agreement on Rules of Origin 1994, art 3.

⁶⁴ *ibid*, art 4(1).

⁶⁵ *ibid*, art 4(2) and Annex I.



substantial transformation of non-originating materials has been carried out. This is perfectly in agreement with the recommendations of the Kyoto Convention.

Annex II of the Agreement on Rules of Origin provides that the Agreement's general principles and requirements for non-preferential rules of origin in regard to transparency, positive standards, administrative assessments, judicial review, non-retroactivity of changes and confidentiality shall apply also to preferential rules of origin. Paragraph 4 of Annex II of the Agreement on Rules of Origin provides that Members shall provide to the Secretariat promptly their preferential rules of origin, including a listing of the preferential arrangements to which they apply, judicial decisions, and administrative rulings of general application relating to their preferential rules of origin as soon as possible to the Secretariat. The Secretariat circulates lists of the information received and available to Members.

5. ASSESSING THE STRENGTHS AND WEAKNESSES OF NIGERIA'S FRAMEWORK

6.1 Strengths

The most significant strength of Nigeria's framework is the structural alignment between the Nigeria Customs Service Act 2023 and the fundamental origin determination principles of the AfCFTA Agreement. The NCSA 2023, section 79 adopts both the 'wholly obtained' criterion and the 'last substantial transformation' criterion as the twin determinants of product origin, which corresponds to the two-limbed approach codified in Article 4 of Annex 2 on Rules of Origin to the AfCFTA Agreement and affirmed by the Revised Kyoto Convention of the World Customs Organisation.⁶⁶ The NCSA 2023 further provides in section 80 that goods may benefit from preferential tariff rates where they originate in a country with which Nigeria has concluded a preferential trade agreement, and that the preferential rules of origin applicable to such goods are those set out in the relevant agreement and in any implementing domestic legislation.

This formulation reserves the content of origin rules to the agreement level while anchoring enforcement jurisdiction firmly in national law. The effect is that the NCSA 2023 creates a functioning legal gateway through which AfCFTA origin disciplines can operate domestically, pending the full domestication of the Agreement by the National Assembly as required by the Constitution of the Federal Republic of Nigeria 1999 (as amended), section 12. Assessed against the benchmarks established by the WTO Agreement on Rules of Origin, the NCSA 2023 provisions provide a credible statutory basis for customs officers to make origin determinations that are rule-governed rather than discretionary.⁶⁷

⁶⁶ NCS Act 2023, ss 79(1), 79(3); Protocol on Trade in Goods to the Agreement Establishing the AfCFTA 2019, Annex 2 on Rules of Origin, art 4; Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures (entered into force 3 February 2006), General Annex, Chapter 1.

⁶⁷ NCS Act 2023, ss 80(2)-(3); WTO Agreement on Rules of Origin 1994, art 3(a); Constitution of the Federal Republic of Nigeria 1999 (as amended), s 12(1).



A second strength lies in the compatibility of Nigeria's existing ECOWAS obligations with the AfCFTA regime-wide architecture. ECOWAS occupies a distinct position among African preferential trade agreements in that it applies a uniform change-in-heading or value-content rule across the entirety of its product schedule, making it the least restrictive of the major African PTAs, with a restrictiveness index score of 2 on a 1–7 scale compared with a COMESA score of 5 and a SADC score of 7.⁶⁸ Nigeria has administered ECOWAS origin rules through the Protocol A/P1/1/03 on the Definition of the Concept of Products Originating from Member States since its entry into force, and its customs administration has accumulated operational familiarity with the change-in-tariff-heading methodology and the minimum value-added threshold of 30 per cent that that Protocol prescribes.

This institutional experience is relevant because the AfCFTA's predominant product-specific rules draw on the same CTC and value-added methodologies: Ayele's analysis of the AfCFTA Rules of Origin Restrictiveness Index confirms that the option to choose between a change in tariff classification or a value-added threshold is the single most prevalent rule under the AfCFTA, applying to 26 per cent of all products at the six-digit HS level.⁶⁹ Nigeria's familiarity with those methodologies means that the institutional learning costs of transitioning to full AfCFTA administration are lower than they would be for states with no comparable regional origin experience. The ECOWAS Customs Code 2017, which Nigeria applies as a member state, further reinforces this continuity by establishing non-preferential and preferential rules of origin as a recognised dual-track system under article 15, directly mirroring the structure that Annex 2 of the AfCFTA employs. This overlap provides Nigeria with a pre-existing doctrinal vocabulary and institutional infrastructure that strengthens its capacity to administer AfCFTA rules without constructing an entirely new regulatory architecture.⁷⁰

6.2 Weaknesses

The most fundamental weakness of Nigeria's framework is its failure to achieve full legal domestication of the AfCFTA Agreement, with the consequence that the product-specific and regime-wide rules in Annex 2 remain unenforceable as a matter of Nigerian constitutional law. The Constitution of the Federal Republic of Nigeria 1999 (as amended), section 12(1) requires that any international treaty to which Nigeria is party must be enacted into domestic law by the National Assembly before it can have the force of law in the country. Nigeria ratified the AfCFTA Agreement in December 2020, but no enabling legislation has been enacted to give domestic legal effect to the detailed origin disciplines in Annex 2 and its Appendices. This is not a procedural technicality. Without domestication, customs officers at Nigerian ports of entry have no secure statutory basis for applying AfCFTA-specific origin criteria, granting preferential tariff treatment, or enforcing the

⁶⁸ J Gourdon, D Kniahin, J de Melo and M Mimouni, 'Rules of Origin across African Regional Trading Agreements: A Landscape with Measures to Address Challenges at Harmonization' [2020] (8)(1) *Journal of African Trade* 96.

⁶⁹ Y Ayele, *Assessing the Restrictiveness of Rules of Origin in the AfCFTA* (ODI Emerging Analysis, January 2024).

⁷⁰ ECOWAS Customs Code 2017, title 1, art 15; Protocol A/P1/1/03.



documentary requirements for certificates of origin that the NCSA 2023, section 82 contemplates in the context of preferential trade agreements.⁷¹

The AfCFTA Impact and Readiness Assessment commissioned by the Nigerian Government itself identified the failure to domesticate bilateral and multilateral trade agreements as a structural constraint on Nigeria's ability to operationalise the preferences contained in those instruments, noting that lack of interaction between government and the private sector had produced low private sector awareness of the trade provisions that formally bind Nigeria.⁷² This gap is compounded by the absence of a self-certification mechanism in Nigeria's current framework. The AfCFTA regime-wide rules, as analysed by Ayele, do not presently permit self-certification of origin except for consignments valued below USD 5,000, requiring instead that certificates of origin be issued by an approved exporter or a designated competent authority of the exporting state party. Gourdon and colleagues have demonstrated that this requirement imposes significant administrative costs, particularly on small and medium-sized enterprises, and is a material driver of under-utilisation of preferential arrangements across African trade agreements.⁷³ Nigeria's domestic framework does not address this problem: the NCSA 2023 does not establish an accredited exporter scheme, and there is no implementing regulation that creates a defined class of approved exporters authorised to make self-declarations of origin. The result is that Nigerian exporters seeking to access AfCFTA preferences remain dependent on a certification process that, in the absence of a functioning single-window system, is administratively slow and commercially deterrent.

A second and distinct weakness is the disjuncture between Nigeria's formal legal obligations and the practical capacity of its trade administration to enforce origin rules against fraud. The AfCFTA RoO regime depends for its integrity on robust border enforcement, yet Nigeria's own readiness assessment recorded a Trading Across Borders score of only 23.08 out of 100 under the World Bank's Ease of Doing Business methodology, placing it significantly below regional neighbours such as Benin (68.94) and Morocco (83.58).⁷⁴ That assessment further identified the abuse of rules of origin through dumping, transshipment and smuggling by both African and non-African trade partners as one of the primary concerns surrounding AfCFTA implementation in Nigeria, and it noted that corruption at Nigeria's borders facilitates those abuses by creating conditions in which origin misdeclaration is administratively possible.⁷⁵ This vulnerability is structural rather than incidental. As Ewulum has demonstrated through an analysis of corruption in the application of international trade law in Nigeria, corruption at the Nigerian Customs Service produces

⁷¹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 12(1); *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228; NCS Act 2023, s 82; A H Mustapha and D Adetoye, 'Nigeria and the African Continental Free Trade Agreement Area (AfCFTA): Issues, Challenges and Prospect' [2020] (7)(2) *Advances in Social Sciences Research Journal* 237.

⁷² *Impact and Readiness Assessment of the African Continental Free Trade Area (AfCFTA) Agreement*, Volume II: Main Report (May 2019).

⁷³ Ayele (n 69).

⁷⁴ *Impact and Readiness Assessment of the African Continental Free Trade Area (AfCFTA) Agreement*, Volume II: Main Report (May 2019) 65.

⁷⁵ *ibid*; B E Ewulum, 'Impact of Corruption on the Application of International Trade Law in Nigeria' [2024] (VIII) (X) *International Journal of Research and Innovation in Social Science* 283, 289.



undervaluation, misclassification and duty evasion. The institutional consequence is that the customs system loses its capacity to function as a reliable instrument of origin verification.

Measured against the AfCFTA's benchmarks, Nigeria's framework is therefore weak precisely where the agreement requires it to be strongest: at the point of origin determination and documentary verification. The regime-wide rules in Annex 2 require that proof of origin be capable of verification through mutual administrative assistance between customs administrations, and the NCSA 2023, section 82 mirrors this by permitting the Nigerian Customs Service to seek additional evidence and to verify certificates through bilateral cooperation. However, the operational value of those provisions is limited where the primary customs infrastructure is compromised by corruption and where the institutional capacity to conduct post-importation audits remains underdeveloped. Without a credible enforcement mechanism at the border, the legal framework could become paper architecture incapable of preventing the trade deflection that rules of origin are designed to forestall.

7. CONCLUSION AND RECOMMENDATIONS

Nigeria's legal framework for RoO administration under the AfCFTA is structurally sound in its design but incomplete in its implementation. As argued, the NCSA 2023 aligns with the AfCFTA's origin determination principles, and Nigeria's ECOWAS institutional experience provides a credible foundation for administering the agreement's predominantly CTC-and-value-added methodology. However, the failure to domesticate the AfCFTA Agreement by an Act of the National Assembly, the absence of an accredited exporter or self-certification scheme, and the systemic corruption that compromises border enforcement collectively prevent Nigeria from converting its formal legal obligations into tangible trade benefits. Unless these gaps are addressed through targeted legislative action and institutional reform, Nigeria risks remaining a nominal AfCFTA participant rather than an active beneficiary of the agreement.

In view of the foregoing, the paper makes the following recommendations:

1. The National Assembly should enact an AfCFTA Implementation Act that gives domestic legal force to the Agreement, including Annex 2 and its Appendices on product-specific and regime-wide rules of origin.
2. The Nigerian Customs Service should, by regulation under the NCSA 2023, establish an Accredited Exporter Scheme that permits qualifying exporters with a demonstrated compliance record to self-certify the origin of their goods for AfCFTA preferential purposes.
3. The Federal Government should deploy a fully operational single-window electronic origin certification system, integrated with the Nigeria Customs Service's existing NICIS II platform, to automate the issuance, verification and audit of certificates of origin under AfCFTA and ECOWAS trade instruments.