



BUSA Position on Product Specific Rules

1. The product specific rules provide the customs administrators with simple, precise and easy to administer rules. Specificity helps to avoid ambiguity.
2. The absence of product specific list rules is not consistent with international best practice in ROO formulation. It is also imperative to note that, three of the four RECs Acquis' (SADC, EAC and COMESA) operate through product specific rules.
3. Please refer to the comments in the text itself for specific comments as highlighted in **blue**.

**TECHNICAL NOTE ON HARMONIZING “GENERAL” AND PRODUCT SPECIFIC
RULES OF ORIGIN FOR THE CONTINENTAL FREE TRADE AREA (CFTA)**

**AFRICAN UNION COMMISSION
DEPARTMENT OF TRADE AND INDUSTRY
CFTA SUPPORT UNIT
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RULES OF ORIGIN FOR THE CONTINENTAL FREE TRADE AREA (CFTA)**

I. BACKGROUND

1. The Assembly of the African Union launched the negotiations for the establishment of a Continental Free Trade Area (CFTA) in June 2015 under its Decision Assembly/AU/Dec. 569 (XXV). Under the same Decision, the Assembly adopted, among others, the following:
 - (a) The Objectives and Principles of Negotiating the CFTA;
 - (b) The Indicative Roadmap for the Negotiation and Establishment of the CFTA;
 - (c) The Terms of Reference for the CFTA Negotiating Forum (CFTA-NF);
 - (d) The institutional arrangements for the CFTA negotiations;
 - (e) The Declaration on the Launch of the Negotiations for the Establishment of the CFTA.

2. Pursuant to its Terms of Reference the CFTA Negotiating Forum (CFTA-NF) established Technical Working Groups (TWGs) to focus on some areas being negotiated towards the establishment of the CFTA. One such TWG was established to propose the legal text of Appendix 2 on Rules of Origin for consideration by the CFTA-NF.

3. At its third meeting held in Durban, South Africa, on 21st to 25th August, 2017 the TWG on Rules of Origin (TWG RoO) recommended that the CFTA-NF guides them on the type of Rules of Origin to be developed for the CFTA. The TWG was split with some delegates preferring “General” (cross-cutting) rules, others preferring Product Specific Rules of Origin while another group preferred a hybrid of these two.
4. At its 7th meeting held in Addis Ababa, Ethiopia, on 2nd – 7th October 2017, CFTA-NF directed¹ the TWG RoO to proceed and propose the text of Annex 2² on Rules of Origin taking into account the merits and demerits of “General” (cross-cutting) and Product Specific Rules of Origin. The CFTA-NF directed the TWG to submit the draft text of the Annex 2 on Rules of Origin for consideration at the next meeting of the CFTA-NF.
5. This Technical Note therefore endeavors to offer perspectives on how the “General” (cross-cutting) and Product Specific Rules of Origin can be blended to achieve a balance for the CFTA Rules of Origin. It is a persuasive contribution to the TWG to work out a way to set out how the Rules of Origin can be developed in fulfillment of the CFTA and the Boosting of Intra-African Trade (BIAT) objectives. The TWG RoO can rely on the Situational Analysis of AU RECs Rules of Origin as well as Protocols for the existing Free Trade Areas (FTAs) in Africa and elsewhere as may be relevant.
6. From the recommendations of this Technical Note, it is expected that the TWG will find a common approach and definitive parameters within which to propose the text of the CFTA Rules of Origin.

II. CRITERIA FOR CONFERRING ORIGIN

7. Traditionally there are up to five criteria that are relied upon in determining the origin of goods whether the rules are of the “General” (cross-cutting) or Product Specific nature. The criteria has been found to be:
 - (i) A Schedule of wholly obtained products; **[The meaning of this rule/interpretation should be thoroughly explained]**
 - (ii) A maximum content for Non-Originating Material (NOM);
 - (iii) A minimum Value Addition content;
 - (iv) Change in Tariff Heading (CTH); and
 - (v) Specific processes through which a product has to be manufactured.

¹ Paragraph 44 of the CFTA-NF 7 Report

² In line with the CFTA-NF Recommendations 22 and 32, the Appendices to the CFTA Trade in Goods and Trade in Services will be henceforth be referred to as Annexes in line with the CFTA-NF to designate titles of Agreement and Protocols to which these Annexes are derived.

8. A simple scan of Rules of Origin in different FTAs can show that all FTA work around the criteria as listed above. [Whether FTA Rules of Origin are “General” (cross-cutting) or Product Specific the criteria remains constant. The difference between the two approaches is the presentation format of the same criteria in different FTAs. The meaning of these two sentences is not clear] In the case of Product Specific Rules of Origin the trends and frequencies of utilizing each criterion over specific areas of the Harmonized System (HS) are also traceable.
9. In the “General” (cross-cutting) format each of the agreed criterion is stated in a single provision of the Agreement and applied on any goods fulfilling that criterion. On the other hand, in the Product Specific format each criterion may be attached to several HS Chapters or thousands [clarity is needed on this] of HS Codes as determined by the negotiators.
10. For example schedules of wholly obtained products are standard for both “General” (cross-cutting) or Product Specific and even in the WTO Non-Preferential Rules of Origin. For this criterion the “General” (cross-cutting) approach would have a single provision referring to the schedule of wholly produced products; yet in the Product Specific approach, this criterion would be attached to several headings of, mainly, Chapters 1 to 24 of the HS. [The same would be repeated for each of the rest of the criteria as adopted for the particular FTA. **More clarity needed on this statement**]
11. The degree of complexity in the Rules of Origin may propel or defeat the aims and objectives of the FTA. As such the TWG can also refer to the documented advantages and disadvantages of each criterion especially under each of the “General” (cross-cutting) or Product Specific approach.
12. In the AU RECs Situational Analysis Report some of the recommendations read:
 - a) ***“In the interest of embracing flexible and trade facilitative ROO as outlined in TFTA³ ROO, the process of developing CFTA ROO should consider embracing the following TFTA four criteria for determination of substantial transformation:***
 - (i) Production using wholly obtained products;*
 - (ii) Non-originating material content (A range of 60% to 70% of the ex-works price of the finished products is applicable);*
 - (iii) Change in Tariff Heading (CTH); (and)*
 - (iv) Specific process.”*
 - b) ***“The process of formulation of CFTA ROO, as underscored by UNDP (2016), should steer away from attempt to harmonize REC ROOs and instead target ROO that achieve the CFTA-NF guide on the above stipulated goal of CFTA ROO.”***

III. RECOMMENDATIONS

³ Tripartite Free Trade Area being negotiated by the COMESA, EAC and SADC.

13. The TWG RoO can propose the text of Annex 2 on Rules of Origin that takes into account the merits and demerits of not only the “General” vs Product Specific Rules of Origin but also of each criterion they will propose. Adoption of a structured manner of developing the text will help the TWG progress the debate expeditiously and escalate issues requiring guidance by the CFTA Negotiating Institutions.
14. It is recommended that the TWG RoO may have to spare sufficient effort in reaching consensus on:
- a) The criteria to be proposed to the CFTA-NF taking into account the list in paragraph 7 above, trending international best practices and recommendations of the Situational Analysis Report;
 - b) A structured methodology that will enable an early “harvest of low lying fruits” under each of the proposed criteria;
 - c) A systemic approach that seeks to exhaust debate under each criterion in the order of:
 - i. Wholly obtained products;
 - ii. Change in Tariff Heading;
 - iii. Non-Originating Materials;
 - iv. Value Addition; **[An appropriate and developmental value per chapter/ heading; as opposed to a uniform value would work well. So, it is actually to be a products specific rule with different percentages for different Chapters/headings]**
 - v. Specific Processes; and
 - vi. Alternatives or combinations of the above criteria.;
 - d) Categorizing the HS Chapters in clusters that may largely attract each criterion as listed above; and
 - e) Isolate cases for escalation to the CFTA-NF from those bracketed for further consideration by the TWG.
15. In line with paragraph 14(d) above the HS Chapters can be categorized as follows:**[this is not a good or helpful categorization – the region cannot use a single rule or type of rule within these chapters.]**

Table 1: Recommended Clusters of the HS

Cluster	HS Chapters	General Description
1.	01 – 27	Agricultural goods; Cement; Minerals; Fuels
2.	28 – 40	Chemicals; Pharmaceuticals; Plastics; Rubber
3.	41 – 49	Skins; Hides; Wood; Paper

4.	50 – 63	Textiles; Textiles articles
5.	64 – 70	Shoes; Headgear; Ceramics; Glass
6.	71 - 83	Precious / Base Metals; Articles thereof
7.	84 – 85	Machines; Machinery
8.	86 – 89	Transport equipment; Vehicles
9.	90 – 97	Miscellaneous manufactured articles; Furnisher; Toys

16. In an effort to conclude easier tasks earlier the clusters can be rearranged to enable the TWG to harvest the low lying fruits and submit the text of Annex 2 on Rules of Origin to the next meeting of the CFTA-NF.