

Rules of Origin in EU-West Africa Economic Partnership Agreement (EPA)*

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This paper provides a broad contour and ex-ante analysis of the rules of origin (RoO) in the EU-West Africa Economic Partnership Agreement (EU-WA EPA) negotiations. It contextualises the significance of rules of origin for utilising opportunities of increased market access offered by the generalised system of trade preferences (GSPs). Analysis of the similarities and differences of the salient features of the rules of origin of various free trade areas is used to build scenarios regarding the likely requests and offers between the EU and West Africa concerning the type, complexity and restrictiveness of the rules of origin regime in the planned agreement. The paper concludes that the framework for negotiating RoO should ensure a systematic approach that precludes complex and difficult to administer rules, as well as permits consistent and unambiguous rules, to bring about increased effective market access through full cumulation which allows West African countries the maximum flexibility in sourcing their inputs and components to engender profound sub-regional integration in line with the overall EPA objective.

Key Words: Rules of origin, preferential trade, cumulation, economic partnership agreement.

Introduction

Generally, rules of origin (RoO) are trade policy instruments applied to determine where a product or its components are produced with the primary aim of establishing the market access eligibility of that product into a trade preference-giving country. Preferential rules of origin, as this type of rules are called, therefore, constitute those guidelines that allow the national source of goods to be defined so as to ensure that granted preferences benefit only those products originating in the preference-receiving countries. Preferential rules of origin define the conditions that a product

must satisfy to be deemed as originating in a country which is eligible for preferential access to a partner's market (Brenton 2003). Their evolution and widespread use are rooted in the need to create disincentives for non-beneficiary countries from a preference scheme against the opportunity to engage in trade deflection, a situation where these non-beneficiary countries channel their export products to a preference-giving country through the grantee or beneficiary country. Thus, RoO discriminate between countries' exports and are recognised not only as one of the remaining and yet to be dismantled primary trade policy instruments following

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the general tariff reduction achieved under the World Trade Organisation framework (ECDPM *In Brief*, 2004), but also a major determinant of the impact of free trade agreement (FTA).

In recent times, RoO have become a key trade policy issue because they have been used beyond the intended purpose: their complexity and heterogeneity across products and FTAs have made them almost the most important instrument of trade distortion to the extent that RoO have been identified as one of the primary causes of the low utilisation of trade preferences by least-developed countries (Hoekman *et al* 2001, Oyejide 2004). Different rules of origin evolved from OECD's Ad Hoc Working Group of the Trade Committee on Preferences in Paris in 1970 when preference-granting countries decided that preferences were unilateral, non-contractual, and donor-driven and as such associated rules of origin had to be determined by the donor countries. In addition, harmonization had to be limited to certification, control, verification, sanctions and mutual cooperation.

There are basically two broad types of rules of origin, namely the preferential and non-preferential rules of origin. The former are common in unilateral and non-reciprocal as well as bilateral but reciprocal trade arrangements whereby either a preference-granting country independently or predominantly determines the content of the package of market access conditions attached to its import liberalisation policy towards selected beneficiary countries or both group of countries agree on reciprocal preferential tariffs. The attached market access conditions are defined according to the criteria contained in such preferential rules of origin. The latter, on the other hand, are rules used to determine the origin of products for all other purposes apart from the basic reason for preferential RoO such as compilation of trade statistics and enforcement of trade restrictive measures including anti-dumping and anti-subsidy actions, as well as quantitative restrictions. Under the multilateral trading system, particularly the WTO framework, non-preferential rules of origin are basic guiding principles for member countries to govern the application of rules of origin. By definition therefore, non-preferential RoO are not as

restrictive, complex and heterogeneous as their preferential counterpart.

A significant implication which preferential RoO have for trade flows apart from being considered a major factor determining the impact of FTAs, particularly when they are very complex and restrictive, is their ability to also reduce the benefits derivable from the removal of tariffs. With respect to which group of countries carries the highest incidence of restrictive RoO, LDCs have been identified as the group which tends to suffer most from complex and benefit-restraining RoO due to the effective limitation that RoO impose on LDCs' market access to preference-granting countries. It is reckoned that only 50 per cent of eligible exports from LDCs enter the EU duty free under the "Everything but Arms" (EBA) scheme due to the complexity and restrictiveness of the scheme's RoO. From the perspective of input sourcing, RoO constrain the extent to which firms can derive inputs from the international market particularly if the cheapest source of inputs does not fall within the permissible input sources under the RoO. They therefore regulate cross-border networking of production of goods while, also, their heterogeneity affects trade flows between sub-regional groupings especially where cumulation of rules of origin—the extent to which production may be aggregated with other countries without losing originating status—is absent. In sum, RoO not only distort the decision to invest and export, their administration tends to be cumbersome.

This paper aims at providing a broad contour and ex-ante analysis of the rules of origin in the EU-West Africa Economic Partnership Agreement (EU-WA EPA) negotiations. Its section 2 provides an analysis of the economics of rules of origin. Section 3 describes the relationship between rules of origin and the utilisation of trade preferences with a view to contextualising the significance of rules of origin in utilising opportunities of increased market access offered by the generalised system of trade preferences (GSPs) and other schemes which share similar characteristics. In Section 4, the salient features of the rules of origin of various FTAs, particularly those of the EU, ECOWAS, l'Union Economique et Monetaire Ouest Africaine (UEMOA or WAEMU), are individually described with a view to drawing

out similarities and differences that can inform fashioning out workable rules of origin regime in EU-WA EPA. Section 5 builds different scenarios of the likely requests and offers between the EU and West Africa regarding the type, complexity and restrictiveness of the rules of origin regime in the planned agreement. Concluding remarks are offered in section 6, which touch on the different types of policy challenges that are needed to be surmounted before and in the aftermath of the agreement.

The Economics of Rules of Origin

Rules of origin (RoO) are put in place to ascertain that exported goods from one of the countries to another in a free trade area (FTA) or preferential trade area (PTA) truly originate from that country and are not just assembled from parts originating from third countries that are not members of the PTA. There are two criteria in use to ensure origin of goods in PTAs. The first is the "wholly-obtained or produced" criterion concerned with whether commodities are totally grown, harvested or extracted from the soil in the territory, or manufactured from any of the commodities wholly-obtained or produced. The second but more complicated criterion is "substantial transformation" of goods which do not meet the first criterion. This second criterion has four basic components applied at the product level to demonstrate the transformation criterion. These are¹:

1. Change of tariff classification (CTC) which requires the product to change a) its Harmonized System (HS) chapter (CC at the 2 digit level); b) its heading (CH at the 4 digit level); c) its sub-heading (CS at the 6 digit level); and d) its item (CI at the 8-10 digit level). The change at the item level is the least restrictive while the change at the chapter level is the most restrictive (Estevadeordal 2000).
2. Exceptions attached to CTC (called an ECTC). These prohibit the use of non-

originating materials from certain subheadings, headings or chapters.

3. Value Content (VC) specifies the minimum percentage value that must be added by the exporting country. This may be expressed in one of three ways: (i) a minimum Regional Value content (RVC); (ii) a minimum difference between the value of the final good and the costs of imported inputs (import content, MC); (iii) a minimum Value of originating Parts (VP).
4. The Technical requirement (TECH) criterion requires the product to undergo certain manufacturing operations referred to as 'substantial working'.

The restrictiveness of these criteria is relaxed by the (a) *de minimis* rules which allow for a specified maximum percentage of non-originating materials to be used without affecting origin; (b) a roll-up or absorption principle that allows materials that have acquired origin by meeting specific processing requirements to be considered originating when used as inputs in subsequent transformation; (c) cumulation (bilateral, diagonal or full) that allows producers of one PTA to use non-originating materials from another PTA member without losing the preferential status. However, the restrictiveness of RoO is strengthened by the imposition of administrative costs via the method used for certifying origin whether a two-step certification (public and private) or self-certification. The criteria along with the associated relaxation through *de minimis*, absorption principle and cumulation indicate that RoO are very complex and detailed.

The effects of RoO are described in what follows. Suppose there are three countries, with two of them forming a PTA. Country A exports a final good which it produces to B, but can import intermediate goods (which it does not produce (i.e. non-originating)) to manufacture the final good either from country C, which is not a member of the PTA, or from country B. This implies that the intermediate imports are perfect substitutes in production. The final good produced in A can be exported to B at preferential (reduced) tariff rates, provided that it satisfies the regional VC RoO criterion. The regional value content (RVC) is expressed by weight, which is a constraint on the quantity (volume) of the imported variety

¹ The economics of rules of origin is summarized from José Anson, Olivier Cadot, Antoni Estevadeordal, Jaime de Melo, Akiko Suwa-Eisenmann and Bolorma Tumurchudur, (2004), "Rules of Origin in North-South Preferential Trading Arrangements with an Application to NAFTA" *Review of International Economics*, Vol. 12, No. 3, pp. 501-517, August 2005

that can be used by the final good producer in A in order to qualify for preferential treatment, and specifies that a proportion of intermediate consumption must originate from the PTA. There is the final good's world price and *ad-valorem* external tariff in B, and the intermediate good's world price and domestic price in the FTA. If country B's intermediate-good industry is inefficient at world prices, the RoO become binding in the sense that B's intermediate price will be higher than the world market price. Suppose that A's producers of the final good enjoy tariff-free access to B's market which is lower than most-favoured-nation (MFN) regime. Then, the benefit from participating in the preferential regime will be such that the net incentives to A's producers granted under the application of the RoO is positive if the gain in terms of market access resulting from a higher price obtained for the final good exceeds the extra costs on intermediate goods due to the application of the RoO. Under this situation, a profit maximizing producer in A of the final good will export duty-free to B's market under the FTA. Hence, net benefit is increasing in the rate of tariff preferences and decreasing in the restrictiveness of the RoO such that deeper preferences are associated with stricter RoO.

Suppose that A's final-good producers used to purchase their intermediate inputs outside of the A-B PTA bloc before the preferential agreement, specifically from C. Then, as RoO are substituted for tariff protection, they start purchasing from within the bloc, from B since A does not produce the intermediate inputs. As a result, country A's costs increase and its producers enjoy only marginally improved market access. But B's producers of intermediates now enjoy a captive A's market such that country B's intermediate-good producers can be expected to lobby in favour of RoO. Since strict RoO require deep tariff preferences, B's intermediate-good producers again can be expected to lobby in favour of deep tariff preferences, with tariff revenue for country B replaced by rents and inefficiencies at the level of intermediate-good producers.

In summary, the application of RoO is expected to cause a) a shift of purchases of intermediates from outside the FTA to intra-FTA by final goods producers; b) a shift of consumers' purchases towards intra-FTA final goods and away from the rest of the world; c)

an increase in the share of intermediate goods trade in total intra-FTA trade.

Rules of Origin and Utilisation of Trade Preferences

In the period leading to the signing of EPA between the EU and ECOWAS, it is important and undoubtedly beneficial to understand the nature of EU rules of origin for LDCs (EU-GSP), especially under the Lomé Conventions, and the utilisation of these preferences. While this knowledge will enable an analysis of the probable nature of EPA rules of origin, a detailed description of EU rules of origin along with those of ECOWAS and UEMOA is provided in section four. The nexus of rules of origin and the utilisation of trade preferences is the focus of this section.

Deliberate efforts channelled towards increasing access of least-developed and developing countries into developed countries' markets include the establishment of trade preferences to reduce the effect of high tariffs, tariff peaks and escalation in developed country markets which have been identified as a significant factor that hinder Africa's trade performance. These preferences grant low-income countries preferential access into developed country markets and are unilaterally designed trade preferences such as the generalized system of preferences (GSP), the African Growth and Opportunities Act (AGOA), European Union's "Everything but Arms" (EBA), EU-ACP Lomé Conventions and other bilateral trade preferences.

Specifically, the EU's preferential market access condition for ECOWAS countries was embedded in two main trade arrangements. One is the EU-GSP scheme which prior to the EBA provided duty-quota-free treatment for all products originating in LDC beneficiaries for an unlimited time period, except arms and ammunition, with special provisions made in respect of rice, sugar and fresh bananas customs duty on which will be phased out over specific transitional period. This is the series of Lomé Conventions which, for 25 years, set out the principles and objectives of cooperation between the ACP states and the European Union, and provided non-reciprocal trade preferences for most exports from ACP countries to the EU. As a result of the non-reciprocal trading arrangement, almost all of the industrial and other products of the ACP countries qualified to gain unrestricted access into the EU market in principle. Part of the Lomé Conventions' benefits to ACP LDCs

include the sugar, beef and veal, as well as the banana protocols established as duty free quotas to beneficiary countries.

The EU-EBA scheme was established as an amendment to, and remained an integral part of, EU-GSP to mitigate the perceived preference erosion from Uruguay Round's (UR) tariff reductions in accordance with most-favoured-nation (MFN) principle, which induced the 1996 Singapore Ministerial Decision to developed countries to improve market access opportunities for less developed countries through special trade preferences. The EU-EBA scheme became effective in March 2001 and aimed at providing duty-free and quota-free market access to some categories of products of LDCs. It was designed for the benefits of all LDCs the largest proportion of which is in Africa. It contains wider product coverage, though full market access for banana, rice and sugar will not be achieved until 2006 and 2009 respectively. The EBA initiative shares common characteristics with the GSP by being unilateral, unbound, and subject to temporary withdrawal, safeguard provisions and rules of origin.

The second arrangement is the ACP-EU Cotonou Partnership Agreement, the successor to Lomé Conventions, which provides for an eight-year roll-over of the previous preferences granted under Lomé IV with minor improvements until 2008. This is a legally binding international treaty between the EU and ACP states under which the former committed to ensuring until 2008 non-reciprocal preferential market access for ACP products.

Evidence of divergent realised from potential trade by LDCs resulting from trade preferences has emerged, thereby generating concerns about the degree of utilization of trade preferences and the possible causes of such divergence. From Table 1, the percentage of dutiable imports covered by GSP schemes for all LDC effective beneficiaries was about 60% in 2001², while the percentage of GSP covered imports utilized by the same group of countries was almost 70% in the same year. However, the percentage of dutiable imports

of LDC effective beneficiaries actually receiving preferences was only about 43% in 2001. Table 2 compares the coverage, utilization and utility rates of GSP schemes of LDC and non-LDC effective beneficiaries. Before 1998, coverage rate of LDCs was lower than that of non-LDCs after which LDCs' coverage rate temporarily surpassed that of non-LDCs and finally converged in 2001.

Both LDCs' GSP utilization and utility rates were higher after 1998, with a divergent trend in the post 1998 period. Though the average coverage, utilization and utility rates for the 1994-2001 period were greater for LDCs than non-LDCs, the differences in average coverage, utilisation and utility rates are small, culminating in only 5%, 14% and 20% respectively suggesting that the differential is marginal.

Extant factors present in preference-granting countries that have induced low utilization of trade preferences have been identified as part of the reasons for their low utilization. These explanations have eroded the main justification for preferential trade arrangements, that is, the ability of trade preferences to facilitate the further opening of preference-giving countries' markets to low income countries. Apart from not fully meeting that expectation, African countries have experienced varying degrees of disappointment and frustration, which has induced further inquiry into the reasons for low utilization of preferences.

Three main reasons have been responsible for not fully deriving the benefits of trade preferences (Oyejide, 2004). One, the magnitude of preference margins is quite small and insignificant for heavily protected products in preference-giving countries. Two, restrictive rules of origin impose additional and usually excessive compliance and other costs on preference-receiving countries. Three, rules of origin in preference-granting countries are often imposed on products of export interest to many African countries in terms of the prospects for expansion and diversification of exports, and hence their feasibility. Hoekman *et al* (2001) listed rules of origin among non-tariff barriers that have eroded the effectiveness of trade preferences such as anti-dumping, safeguards, graduation mechanism, Sanitary and Phyto-sanitary standards (SPS), Technical Barriers (TBT), and the discretion of preference-giving countries. Indeed, the

² Product coverage is defined as ratio of imports covered by preferences to total dutiable imports from beneficiary country; utilisation rate is defined as the ratio of imports actually receiving preference to GSP covered imports; utility rate is defined as the ratio of imports actually receiving preference to all dutiable imports (UNCTAD, 2003).

Table 1: Quad imports and utilization of the GSP schemes from all LDC effective beneficiaries [in US thousand dollars]

Year	Total imports	Dutiable imports	GSP imports		Percentages		
			Covered	Receiving	Coverage	Utilization	Utility
[1]	[2]	[3]	[4]	[5]	[3]/[4]	[4]/[5]	[3]/[5]
A	B	C	D	E	F	G	H
1994	5347	3917.3	2071.0	999.0	52.9	48.2	25.5
1995	6087.8	4706.1	2564.3	1361.2	54.5	53.1	28.9
1996	9956.3	7451.1	2985.0	1517.9	40.1	50.9	20.4
1997	10624.1	8163.4	5923.1	1788.2	72.6	30.2	21.9
1998	9795.7	7915.1	5461.1	2704.5	69	49.5	34.2
1999	10486.5	8950.4	5789.5	3487.5	64.7	60.2	39
2000	13359.2	11715.5	7529.4	4990.2	64.3	66.3	42.6
2001	12838.2	11523.9	7305.3	4919.9	63.4	67.3	42.7

Source: UNCTAD 2003, Table 1

Table 2: Coverage and utilization of GSP schemes in Quad countries from LDC and Non-LDC effective beneficiaries (%)

	Coverage		Utilization		Utility	
	LDC	Non-LDC	LDC	Non-LDC	LDC	Non-LDC
1994	52.9	57.2	48.2	51.1	25.5	29.2
1995	54.5	59	53.1	55.2	28.9	32.5
1996	40.1	51.1	50.9	56.1	20.4	28.6
1997	72.6	57.3	30.2	50.8	21.9	29.1
1998	69	58.5	49.5	40.3	34.2	23.6
1999	64.7	57.1	60.2	40	39	22.9
2000	64.3	55	66.3	40.9	42.6	22.5
2001	63.4	62.1	67.3	37.8	42.7	23.4
Average	60.2	57.2	53.2	46.5	31.9	26.5

Source: Computed from UNCTAD, 2003, Tables 1 – 3.

Lomé trade regime was subject to certain restrictions relating to the so-called sensitive products and rules of origin (Oyejide and Njinkeu, 2002).

Stringent rules of origin also appeared to reduce the impact, by nearly five-fold, that AGOA could have had on African non-oil exports, representing US\$0.54 billion compared with realized US\$100-140 million (Matoo *et al* 2002). Augier, Gasiorek and Lai-Tong (2004), using an augmented gravity model to empirically investigate the impact of rules of origin on trade flows in the EU found results that suggest that rules of origin indeed restricted trade, by leading to trade suppression and/or trade diversion, and that cumulation of such rules could increase trade in the order of 70-80% in the aggregate between cumulating countries. In earlier studies, Hoekman (1993) and Gasiorek *et al* (2002) perceived the degree of impact of rules of origin to depend on the height of the importers' tariff. In sum, apart from the important role that rules of origin play in preferential trade agreements, they have been blamed for the failure of developing country trade preference schemes (Francois 2003), which is in consonance with caution about their potential use as technical barriers to trade expressed in Baldwin (2001).

According to UNCTAD (2003), the utilization rate under the EBA for all LDCs was as low as 38% in 2002, which was below the 49% recorded under the pre-EBA GSP, due to the absence of changes and improvements in the rules of origin requirements of the EBA. This rate was single digit for ACP states (2.6%) even though this represented an improvement in utilization rates during 2000 (1.5%) and 2001 (1%) when these countries enjoyed preferences under the EU-ACP arrangement. Indeed, UNCTAD (*op. cit.*, p. 53) emphatically stated that "recent literature ... increasingly indicate rules of origin as prime suspects with regard to under-utilisation of trade preferences and distortion in free trade areas". It went further "the past 30 years of operation of the GSP have been characterized by a low percentage of utilization, mainly caused by the inability of preference-receiving countries to fully exploit the available preferences when these are subject to strict origin requirements and related administrative requirements" (pp. 71).

Rules of Origin in EU FTAs, ECOWAS and UEMOA

Rules of Origin in EU GSP, EBA and Cotonou Agreement

Usually, the rules of origin of a particular FTA are evaluated on the basis of origin criteria, *de minimis* rule, flexibility in terms of their offer and type of cumulation, drawback provisions and the presence of derogation of rules of origin. EU RoO can be examined within the context of its Generalised System of Preferences, EU-EBA, EU-ACP preferences, and EU-Cotonou Partnership Agreement (CPA). There are other EU bilateral agreements that may be useful in the later part of the paper such as those in the EU-Mediterranean and EU-South Africa agreements.

EU GSP grants developing countries duty free access to its market since 1971 on a non-reciprocal basis. The relevant RoO in the EU GSP uses the common three main origin criteria to determine the originating status of products (mostly industrial goods in HS chapters 25-97) that enter its market. These are: a change in tariff heading (CTH), value added (VA), and specific process (SP) criteria³. As a result of these criteria, a product exported from a preference-eligible country must have wholly originated from that country or sufficiently worked or processed in accordance with the CTH, VA and SP criteria in that country to have been deemed to possess originating status, in particular its non-originating components. In addition to these criteria, the EU provides for a *de minimis* rule⁴ which grants up to 10% of value of the ex-works price of a non-clothing good to consist of non-originating material. This minimum is however subject to the proportion entered in the product specific rules.

³ CTH rule requires that the product must have been substantially transformed to result in a different tariff heading from the input materials used; VA rule expects that a prescribed minimum percentage has been added locally in terms of the ex-works price of the good; SP rule demands that prescribed sufficient working or processing is undertaken in producing the good in the preference-receiving country which then confers local origin on the good.

⁴ Also known as tolerance rule, *de minimis* rule allows a certain percentage of non-originating materials to be used without affecting the origin of the final product. These are usually a certain pre-determined proportion of the ex-works price of the final product.

EU GSP beneficiaries are not subjected to a drawback rule⁵ but enjoy concessions in the type of cumulation opportunities that they can exploit. EU GSP allows bilateral cumulation and a restricted regional cumulation, the latter with members of Association of South East Asian Nations (ASEAN), South Asian Association for Regional Cooperation (SAARC) countries, and the Andean Community. While bilateral cumulation implies that the preference-beneficiary country can use non-originating materials from EU and vice-versa, restricted regional cumulation allows members of these groups to use materials sourced from one another but originating status is conferred on the good from the exporting country if the value added in the exporting country exceeds the value added in any of the trading partners in the region which must have provided materials for or some processing of the good⁶. The administrative and documentary requirements in the EU GSP include the use of a particular form EUR 1 as a goods movement certificate as well as an origin certificate (Form A), an existing cooperation agreements to benefit from regional cumulation, and established procedure for origin certification of goods as they move within the region.

The EU EBA initiative was targeted at least-developed country members of the EU GSP and, as such, rules of origin of both have many similar features⁷. For example, EU EBA origin criteria are similar to those of the EU

GSP while the documentary requirement for EU EBA was only 'Form A' (Table 3). Also in the case of EU-ACP CPA, most of the requirements are similar to those of EBA with certain exceptions. For documentation, the CPA requires exporters to complete a certificate of movement EUR 1 and preserve this for 3 years, while *de minimis* rule allows a maximum percentage of 15% of the ex-works price of the product, which is also applied to textiles and clothing. This tolerance level is the highest of all EU trade preferences (*InBrief*, 2004). There is bilateral cumulation between ACP and EU countries as well as diagonal cumulation with South Africa (but value added in the exporting country must be higher than in South Africa, this additional rule is applicable three years after the conclusion of EU-SA EPA) while limited cumulation is granted to neighbouring countries that already belong to a coherent geographical entity. This last concession requires that administrative agreements must have been concluded between EU-ACP and the neighbouring countries.

ECOWAS and UEMOA Rules of Origin

ECOWAS rules of origin are contained in ECOWAS Trade Liberalisation Scheme (ETLS) Protocol/API/1/03 whose articles 2 to 11 dealt with various issues ranging from definition through the treatment of goods produced in free zones to the proof of origin of products. Goods wholly obtained or produced in member states have originating status in the Community. Where goods are not wholly obtained and contain non-originating materials, such materials must have undergone specific processing or working in member states to confer Community origin. Originating products which contain wholly produced or sufficiently transformed materials are considered products originating in the member state in which last substantial processing or transformation took place.

⁵ The drawback provision allows originating exported good which uses non-originating materials to be exempted from import duties or duties remitted to the importer.

⁶ UNCTAD (2001) showed that the value added requirement can render regional cumulation of little value. Brenton (2003) gave an example as follows: value-added in the making up of clothing in Bangladesh ranges from between 25 and 35 per cent of the value of the product so that the import content of the fabrics from India is around 65 to 75 per cent. In this case the value-added requirement placed on regional cumulation is not met and origin of the made-up clothing is not conferred on Bangladesh but on India. Regional cumulation still allows clothing produced in Bangladesh from Indian fabrics preferential access to the EU but not at the zero rate (for which Bangladesh is eligible) but at the rate for which India is eligible, which is a 20 per cent reduction from the MFN rate, that is a tariff of 9.6 per cent.

⁷ One comparison of EU-EBA and the CPA (Busse and Grobmann 2004) observed that under the EBA, producers in least-developed ACP countries have to use fewer imported materials, parts and components from other ACP countries in order to obtain duty- and quota free access to the EU than they would be allowed to use under the provisions of the Cotonou Agreement.

Table 3: Rules of Origin in US, and EU-GSP schemes, and AGOA and the Cotonou Partnership Agreement

Country/group of countries	Origin Criteria	Requirements	Numerator	Denominator	Percentage Level	Administrative Requirements
European Community EBA	Product-specific rules for all products	Change of HS heading with or without exemptions, working or processing requirements and/or maximum percentage of imported inputs of combinations of requirements	Customs value of imported inputs, or the earliest ascertainable price paid in the case of materials of unknown, undetermined origin	Ex-works price	Maximum imported inputs 5%, 20%, 25%, 30%, 40%, 47.5% 50% where used in single list.	GSP-Form A compulsory for all products. Form A to be stamped by officially designated government authority.
EU-Cotonou Partnership Agreement	Same as above	Same as above	Same as above	Same as above	Same as above	Form EUR 1 needed. Self-certificating procedures available.
United States	One single percentage rule (35%) across the board for all products	Minimum local content requirement	Cost of materials produced in preference-receiving country plus the direct cost of processing carried out there	Ex-factory price or appraised value by US customs	Minimum 35%, exact percentage must be written in certificate of origin.	No certificate of origin required.
AGOA	All products as above except apparel articles	Minimum local content requirement	Cost of materials produced in preference-receiving country plus the direct cost of processing carried out there	Ex-factory price or appraised value by US customs	Minimum 35%, exact percentage must be written in certificate of origin.	Special visa requirements apply for textiles and clothing

Source: UNCTAD 2003.

Article 3 defined goods wholly produced in member states which are basically primary products raised, extracted, harvested and obtained in member states and, in manufacturing another product, used alone or mixed with other materials and represent at least 60% of the total quantity of raw materials used. Operations and processes conferring origin include transformation that induces a change in tariff heading of a product, and generate a value added to materials used which must be at least 30% of the ex-factory price of the finished product. Simple operations that do not confer origin include ventilation drying sifting, sorting, breaking up, assembly, bottling, marking or labelling, mixing of products, simple assembly of parts, salting, freezing of meat, *et cetera*. Goods produced under the condition of free trade zone which entail partial or total suspension of customs duty are not considered as originating products. Origin of a product is proved through the use of a certificate of origin which is not required for agricultural and livestock products, articles made by hand or produced without tools, instruments, or implements directly operated by the manufacturer. Finally, originating industrial products are required to carry identification marks. In article 17, the rules of origin are expected to enter into force on the signature of nine member states.

In other words, ECOWAS grants member countries duty free access to each other's market on preferential FTA and reciprocal basis. Its origin criteria to determine the originating materials and components are a change in tariff heading (CTH), value added (VA), and specified manufacturing process (SP) criteria. Thus, a product exported from a member state must have wholly originated or sufficiently worked or processed, especially its non-originating materials, according to a combination in different degrees of CTH, VA and SP criteria to possess originating status. Since materials from member states can represent up to 60% of the total quantity of materials used, the ECOWAS RoO have a semblance of *de minimis* rule that grants up to 40% to non-originating materials. ECOWAS do not have product specific RoO, neither does it have a drawback rule that members can exploit. This renders ECOWAS rules of origin simplistic, they are nevertheless restrictive as they do not allow for cumulation possibilities beyond the implicit one provided to members

of the RTA. Since goods wholly obtained in the territory of one or more Members of ECOWAS are originating in the ECOWAS territory, there is an implicit cumulation opportunity as such goods qualify for preferential tariff treatment.

The UEMOA rules of origin consider a product originating in the Union if it is wholly obtained or has been the subject of sufficient working or processing leading to transformation in a member state. Its definition of 'wholly obtained' is similar to that of the ECOWAS emphasising animals born and raised; products hunted, fished, collected, or produced, in member states. When products are not wholly obtained but contain non-originating materials, such materials must be sufficiently worked or processed to lead to a change in four-digit tariff heading, and value added of at least 30% of the ex-works price of the product. Similarly, operations and processes not conferring origin in UEMOA RoO are exactly those in ECOWAS RoO. The similarity of RoO extends to such goods produced under the condition of free trade zone; proof of origin of a product; and marking requirement for originating industrial products. In other words, there is really no difference between ECOWAS and UEMOA RoO.

Salient features of WTO and EU non-preferential RoO

The WTO's provisions on rules of origin as contained in the Agreement on Rules of Origin (ARO) apply to commercial policy instruments such as the application of MFN treatment, anti-dumping and countervailing duties, safeguard measures, origin marking requirements, discriminating quantitative restrictions or tariff quotas, and government procurement. They do not cover preferential RoO neither are they detailed harmonised rules of origin to be used by Members even when the need for harmonised RoO is recognised for transparent and predictable world trade. They are general principles on the elaboration and use of RoO by WTO members concerning trade in goods. The ARO provides the mandate for harmonisation by the WTO Committee on Rules of Origin (CRO) and the WCO Technical Committee on Rules of Origin. The definition of what constitutes a *wholly obtained* product and the country of *last substantial transformation* has been the preoccupation of the joint committee, which in

the case of the latter, has defined that the principal criterion to be used is in determining substantial transformation is the CTH based on harmonised system (HS) nomenclature, with supplementary VA and SP nomenclature in some cases.

The WTO ARO has four main principles namely, transparency, neutrality, non-discrimination, and predictability and due process. The principle of transparency (Article 2 (a), (f), (g), and (h) and Article 5) is about Members providing unambiguous definition of requirements conferring origin on goods such as specifying the applicable tariff heading or sub-headings, the method to calculate the *ad valorem* percentage for the VA system, and the relevant manufacturing process for the SP system. It encourages members to emphasise what confers origin rather than what does not in their rules of origin, and promptly publish and give advance notice of all laws relating to new or modified RoO. The neutrality principle (Article 2 (b) and (c)) urges that RoO should not constitute instruments to restrict or distort trade while the principle on non-discrimination (Article 2(d)) obliges RoO to conform to national treatment and most-favoured-nation principles. Finally, predictability and due process (Article 2(e) and (j)) imply that application of RoO should be consistent, uniform, impartial and reasonable while it should be possible to review RoO.

The EU is considered as the only regional trade arrangement (RTA) with non-preferential RoO alongside its preferential RoO. Its non-preferential RoO are used in member countries for commercial trade policy to determine MFN treatment, anti-dumping and countervailing duties, among others. Its origin criteria are relatively simple (OECD, 2002) with substantial product transformation considered as such if it is economically justified and results in a new product or represents an important stage of manufacture.

EU-West Africa RoO Negotiations under EPA

It is widely believed that the likelihood of EPAs resulting in a better market access opportunity for ACP countries than under the Cotonou Agreement is doubtful. This perception is couched on the thinking that the EU is not likely to substantially liberalise its agricultural trade, despite the promise to do so

in view of the Cancun logjam, thereby limiting the scope for additional trade for ACP countries in general and ECOWAS countries, which appear to have comparative advantage in agricultural products, in particular. According to Busse and Grobmann (2004), it seems likely that least-developed ACP countries have little incentive to participate in an EPA, as they already benefit from the EBA initiative. However, Brenton (2003) observed that there may be a clear incentive to sign EPA with the EU since the rules of origin applied to ACP countries under the GSP which governs the EBA are more stringent than the rules applied to these countries under the Cotonou Agreement (Brenton, 2003). Considering the controversy that the decision to participate in EPA is already generating, a framework for articulating ECOWAS negotiating position in the area of RoO should help to place these issues in proper perspective.

Basically two broad types of rules of origin exist, namely the preferential and non-preferential rules of origin. As the former exist in a preferential trade arrangement, the market access conditions attached to the arrangement must necessarily be more favourable than the conditions offered in arrangements that are non-preferential, particularly those based on the MFN principle. The type of preferential arrangement envisaged in the EPA is the duty-quota-free access of goods on a reciprocal basis which, *prima facie*, is more beneficial than the MFN arrangement which admits goods based on MFN tariff rates. However, reaping benefits from the FTAs is not a straight forward implication of duty-quota-free access for several reasons. First, as a result of the various distortions introduced into FTAs in the past, such as the application of restrictive rules of origin, preferential trade arrangements have not in reality offered the kind of market access potential expected. Second, inadequate supply response capacity of ACP states has the tendency to limit the benefits that FTA can offer. Third, trade policy (especially in the area of non-tariff barriers) other than rules of origin and tariff reduction in developed group of countries continues to constrain trade flows. The EPA may therefore have to contend with these other challenges even if its rules of origin are very liberal.

WTO-compatibility notwithstanding, the EPA rules of origin are expected to be preferential, this justified by the fact that duty-

quota-free access of partners' goods is in principle more favourable than WTO's MFN tariff. Since preferential rules of origin have been notorious for being restrictive and complex, they need to contain certain flexibility to be able to offer benefits to the LDCs and developing countries that will be party to the EPA. Suppose, for the benefit of analysis, that non-tariff barriers (e.g. Sanitary and Phyto-Sanitary Standards (SPS)) do not restrict trade flows between the partners (EU and West Africa), and ECOWAS countries also have sufficient supply response capacity (which is most unlikely), then the challenge posed by restrictive and complex rules of origin will have to be tackled during the EPA negotiations. To achieve a favourable offer on RoO from the EU, West African countries need to be cognisant of the liberal or otherwise of the sway of the proposed Agreement's rules of origin and juxtapose whatever offer from the EU with what West African countries already benefit from the EBA and Cotonou Agreement as well as the structure and sources of their trade with the rest of the world. In other words, because many of the countries that will enter into EPA with the EU are LDCs with very low industrial capacity and weak backward and forward industrial linkages⁸, it will be important for these countries to assess the degree to which the agreement allows them to source non-originating materials that will be used in their manufacturing processes from a network of cheap producers, on the one hand, and the extent to which their economies would be de-industrialised by the surge in EU imports whose industries are likely to relatively satisfy the EU-WA EPA rules of origin, on the other.

Preferential RoO not only have the ability to limit trade flows as a result of their restrictiveness and complexity, but also the rules create trade diversion and suppression resulting from their primary aim to discourage trade deflection. In effect, the RoO associated with the EPA need to provide cumulation opportunities for West African countries that extend to their current and potential raw materials and components trading partners. This perception assumes that in EU-WA EPA, cumulation is relatively less relevant to members of the EU as they possess better developed industrial capacities that have

adequate forward and backward linkages, even in the presence of current wave of globalisation. Be these as they may, there are at least four related issues that are relevant in the analysis of the likely form that the EPA RoO would take.

One is the flexibility of RoO contained in existing EU FTAs, such as those existing between EU and South Africa, and the Mediterranean countries. It is most pertinent to know whether West African countries would be able to draw some lessons from the experiences of these countries. Two, is the extent to which full cumulation, if allowed in the envisaged EPA RoO, would make West African countries continue to source their production materials and components from countries outside the FTA. This would require knowledge of current sources of ECOWAS intermediate inputs, as well as manufacturing value added and the share of manufacturing in GDP. Three, the necessity to identify the interface between the EPA RoO and rules governing other preferences such as the AGOA cannot be overemphasised. This interface certainly has implications for the cost of meeting proliferating RoO. Four, ECOWAS countries need to be cognisant of the role and implication which product specific RoO have for the development of their economies. In particular, RoO in EU GSP have product specific rules such as for textiles and clothing that are more restrictive and which may be transferred to the EPA RoO. A glimpse of relevant data, such as the direction of intermediate goods trade, and the share of manufactures in GDP of both groups of countries, comparison of literature evaluating other EU FTAs, among others, is offered in what follows to provide insights into the discussion of what type of flexibility the EPA rules of origin should allow.

Table 4 gives an indication of the structure of production in the EU and in West Africa, which really is a reconfirmation of stylised facts. The latter, relative to the former exports more agricultural raw materials and imports less of the goods as well as possesses higher agricultural value added, consistent with the relative abundance of agricultural resources and dominance of agricultural production in West Africa. The EU, on the other hand, exports and imports more manufactures as well as have higher manufacturing value added than West Africa for the same reason and as a result of its technological capabilities.

⁸ Other than Nigeria, Ghana and Cote d'Ivoire, remaining ECOWAS members are LDCs.

Table 4: Structure of Production in EU and West Africa in 2000

Indicator	European Union	ECOWAS
Agricultural raw materials exports (% of merchandise exports)	1.5	8.77
Agricultural raw materials imports (% of merchandise imports)	2.2	1.57
Agriculture, value added (% of GDP)	2.3	33.9
Manufactures exports (% of merchandise exports)	82.4	20.1
Manufactures imports (% of merchandise imports)	72.7	57.3
Manufacturing, value added (% of GDP) ^a	21	9.01

Source: World Development Indicators, 2002; Note: 'a' = data for 1999.

Table 5: Origin Criteria in Agreement involving the EU

	Change of Tariff Classification (principal, secondary level)	Value Added		Specific Manufacturing Process	Cumulation	Tolerance	Absorption
		Domestic or Import Content	Implied Import Content				
EU-Pan Euro	Yes (4, 2)	Yes – Import (50-30%)	(50-30%)	Yes	Bilateral Diagonal	Yes 10% ^b	Yes
EU-GSP	Yes (4, 2)	Yes – Import (50-30%)	(50-30%)	Yes	Bilateral Diagonal ^a	Yes 10% ^b	Yes
EU-Cotonou	Yes (4, 2)	Yes – Import (50-30%)	(50-30%)	Yes	Full with All ACP countries Limited cumulation with South Africa	Yes 15% ^c	Yes
EU-Chile	Yes (4, 2)	Yes – Import (50-30%)	(50-30%)	Yes	Bilateral	Yes 10%	Yes
EU-Mexico	Yes (4, 2)	Yes – Import (50-30%)	(50-30%)	Yes	Bilateral	Yes 10%	Yes
EU-Mediterranean	Yes			Yes	Bilateral Diagonal with Tunisia, Algeria, Morocco. Pan-Euro cumulation pending ^d	Yes 10% ^b	Yes
EU-South Africa	Yes (4, 2)	Yes – Import (50-30%)	(50-30%)	Yes	Bilateral Diagonal (ACP) Full (SACU)	Yes 15%	Yes
EU-West Africa	?	?	?	?	?	?	?

Source: Brenton (2003)

(a) Within Andean, ASEAN, CACM, SAARC only and subject to a 50 per cent value added requirement in the country of export.

(b) alternative rules for textiles and clothing products, often in terms of weight rather than value

(c) up to a maximum of 15 per cent of the value of the product

(d) Pan-Euro-Mediterranean cumulation is planned to be extended to all Mediterranean countries that have trade agreements with the EU.

West Africa imports more manufactures than it exports while the EU exports more manufactures than it imports. What is more relevant in the structure is the indicator of manufacturing value added which has direct relationship with rules of origin. Clearly, it will be easier for EU firms to meet the value added conditionality in EPA RoO than West African countries if the criteria follow what is contained in other existing EU agreements. For example, the maximum percentage of imported inputs of combinations of requirements, that is, domestic or import content in originating products range from 30-50% in all EU FTAs whereas the highest manufacturing value added in West Africa, though aggregative, was 9% in 1999. Thus, this appears to be an area where the greatest flexibility and attention will be required in the EPA RoO.

Related to this is the issue of whether the explicit mention of percentage of value added in originating goods is not more restrictive than the requirement of vague and ambiguous 'substantial transformation' from the exporting country. The former requirement is subject to fluctuation of cost components of the originating product particularly those fluctuations due to exchange rate movements. Exchange rate depreciation renders imported inputs more expensive and makes it more difficult to meet value added requirement. It is not clear how the negotiation of this criterion will be settled since UEMOA, a part of the West African countries, is a currency zone with less exchange rate fluctuation than the non-UEMOA members.

Table 5 indicates the origin criteria in existing EU FTAs. The difference in the origin criteria is with respect to two areas namely, the type of cumulation offered, and the *de minimis* rule. Based on the type of available cumulation possibility, the origin criteria in EU-Chile and EU-Mexico are the most restrictive since they only allow for bilateral cumulation. Next in ranking is the EU-Pan Euro and EU-GSP which additionally permit diagonal cumulation. The origin criteria in EU – South Africa appears to be close to these two but for the full cumulation which the FTA has with members of Southern African Customs Union (SACU).

The most liberal of the RoO, therefore, appears to be that of the EU-Cotonou FTA which is acting as a transitional arrangement, and a probable inducement to ACP countries,

prior to the signing of EU-ACP EPAs in December 2007. Notwithstanding, there is limited cumulation with South Africa, which may possibly constrain the development of intra-African trade. The *de minimis* rule is also less stringent in the case of the CPA and EU-South Africa Agreements. Combining both cumulation and *de minimis* rule therefore renders the CPA's the most liberal among the RoO of EU FTAs. However, according to Brenton (2003), the *de minimis* rule applies to the change of tariff heading and the specific manufacturing rules and does not affect the value added rules, implying that while it does not act to lower the limitation on the use of imported materials, non-originating materials will be counted in import content calculations.

The interface between the EPA and AGOA RoO has implications for the cost of complying with different types of RoO in post-EPA era. AGOA rules of origin permit full cumulation as well as regional cumulation with ACP countries though the effect of its limitation of requiring donor country content in the AGOA imports may act as a binding constraint (Table 6). It appears, on the face value therefore, that the RoO in AGOA may not lead to large additional compliance cost if the EPA RoO offers the type of cumulation permitted under AGOA, but the fact that donor country content is required to qualify for AGOA's originating status may constrain the benefits from this opportunity. In addition, product specific RoO may include, as always, more restrictive conditionality than basic rules of origin that will subsequently render the seeming compatibility incongruous.

Table 7 contains the ten most important imports and exports of selected ECOWAS countries whose sources of imports are also included. For the LDCs, Senegal and Gambia, and Cote d'Ivoire, a developing country, the five most important imports in 2002 were solely for consumption purposes which were for food, transportation, fuel, and housing. Generating sets and machine parts were important in Ghana and Nigeria respectively, giving an indication of some industrial activity.

Table 6: Cumulation and Derogation of Rules of Origin

Country/Group of Countries	Scope of cumulation		Donor country content	Documentation	Additional requirements/information	Other conditions	Possible derogation to rules of origin
	Full or diagonal	Global Regional					
EU-EBA	Partial/diagonal	Regional	Yes	Certificate needed to indicate use of regional cumulation	Coordinating body of regional grouping undertakes to comply with rules. At present, SAARC, ASEAN, ANDEAN, and CACM.	Regional groups must make application and possess central organisation capable of ensuring administrative cooperation	Yes, only for LDCs
CPA	Full	All ACP countries	Yes	Supplier Declaration	Not applicable	Limited cumulation with South Africa and other developing countries	Yes, with simplified procedures.
United States	Full	Regional	No	Not specified	At present, ASEAN, CARICOM, SADC, and WAEM are granted regional cumulation	(a) regional cumulation granted (on application to free trade areas and customs unions) (b) competitive need limits are assessed only against the "country of origin" and not entire regional grouping	No
AGOA	Full	All sub-Saharan beneficiaries	Yes	Not specified	Not applicable		No

Source: UNCTAD 2003, Table 34

Table 7: Ten most important imports and exports of Selected ECOWAS Countries (4-digit HS codes and countries)

Ranking	Imports and Sources 2002										Exports 2002				
	Cote d'Ivoire	sources	Gambia	sources	Ghana	sources	Nigeria	sources	Senegal	sources	Cote d'Ivoire	Gambia	Nigeria	Senegal	
1	1006	CHN, THA	5208	CHN, IND	8702	DEU, USA	2710	BRA, FRA	2709	NGA, AGO	1801	1801	2709	2809	
2	3004	FRA, IND	1701	BRA, FRA	8502	ITA, GBR	1001	USA, CAN	1006	THA, VNM	1803	7601	2711	2710	
3	0303	FRA, ESP	6402	CHN	2710	GBR, NLD	1006	THA, IND	2710	NLD, ITA	4407	4407	2710	1508	
4	2710	BEL, ITA	0402	NLD, SEN	2523	TGO, TUR	8431	USA, GBR	8703	FRA, JPN	2710	2602	1801	3105	
5	8703	FRA, DEU	1507	BEL, DEU	9999	NLD, ITA	8703	DEU, FRA	8802	DEU, USA	0804	1604	9827	2709	
6	1001	FRA, CAN	2402	GBR, CHE	1001	CAN, USA	3004	FRA, IND	3004	FRA, IND	0803	4408	4106	2510	
7	5208	CHN, IND	8703	DEU, JPN	1701	BRA, SAF	8905	KOR, ARE	1001	FRA, DEU	1804	0804	4105	2305	
8	7210	LUX, JPN	2523	TUR, BGR	1006	USA, THA	1701	BRA, FRA	8704	FRA, USA	1604	1804	0306	3808	
9	8471	FRA, CAN	2710	SEN, CHE	6309	GBR, NLD	5810	KOR, AUT	1507	BRA, ARG	4001	2710	4403	2523	
10	0402	NLD, GBR	1101	BEL, MAR	8431	USA, SWE	8471	FRA, GBR	2401	USA, ITA	2709	1803	9999	2501	
All Trading partners		14		14		13		10		13					
Non-EU		5		8		7		7		9					
Sources of imports (no of countries)		36%		57%		54%		70%		69%					
Proportion of non-EU import sources (%)															

Source: ITC Website

Key: AGO Angola, ARE United Arab emirate; ARG Argentina; AUT Austria; BEL Belgium; BGR Bulgaria; BRA Brazil; CAN Canada; CHE Switzerland; CHN China; DEU Germany; ESP Spain; FRA France; GBR United Kingdom; IND India; ITA Italy; JPN Japan; KOR Korea; LUX Luxembourg; MAR Morocco; NGA Nigeria; NLD Netherlands; SAF South Africa; SEN Senegal; SWE Sweden; THA Thailand; TOG Togo; TUR Turkey; USA United States of America; VNM Vietnam.

European Countries: Austria Belgium Denmark Germany Greece Finland France Ireland Italy Luxembourg Netherlands Portugal Spain Sweden United Kingdom
New members: Cyprus Czech Republic Estonia Hungary Latvia Lithuania Malta Poland Slovakia Slovenia

For Ghana, generating sets were imported from EU members and for Nigeria, imports of machine parts were obtained from the USA and United Kingdom. Two points clearly emerge from this somewhat limited analysis. One, since the most important actual imports of many of these ECOWAS countries are for consumption purposes, the appropriate analysis for application of rules of origin in EPA should be concentrated in the area of potential imports for future industrialisation drive such that the EPA negotiations should be cognisant of this upfront. Two, there would be cases especially in the developing countries of West Africa where the most important imports of intermediate inputs will be sourced from different FTAs with dissimilar rules of origin (such as import of machine parts from the US and UK, with the latter supply 68% of the imports to Nigeria). These underscore the need for detailed analysis of RoO of FTAs in which West African countries are currently participating. The fact that non-EU sources of ten most important imports of West African countries (in Table 7) constitute more than 50% and up to 70% in the case of Nigeria strengthens the justification for the request for systematically studied and negotiated RoO under EU-WA EPA.

Given the above scenarios, the next related issue of interest is the likely offers and requests that will be negotiated between the EU and West Africa with regard to rules of origin. Going through EU FTAs, the RoO that appears most attractive to the EU is that of EU-South Africa, this being so due to the reciprocal nature of the whole agreement, on the one hand, and because there would be no need to offer the CPA-type of RoO as inducement to agree to negotiate as soon as negotiations commence, on the other. If this is agreed, ECOWAS countries will face *de minimis* rule of 15% as in the CPA, and have diagonal cumulation rights with each sub-regional group in the region which are more stringent than is available with ACP countries under CPA. But West African countries need to have full cumulation rights with these other sub-regional groups as well as with AGOA. EU's fall-back position is really the *status quo*, that is, the RoO in CPA which offers full cumulation with all former ACP countries and limited cumulation with South Africa.

From West African point of view, it is the developing countries among its members that

have greater potential for industrialisation in the short run and this potential should help it define the type of cumulation rights it should request from the EU. Nigeria, Ghana and Cote d'Ivoire source imports from countries in Asia, North America, Southern Africa, and South America in addition to the EU. In order for the sub-region to reap the fullest benefit from the EPA RoO, full cumulation rights should be granted to source non-originating materials from members of ASEAN, NAFTA, CARICOM, SADC and AGOA. This will be consistent with the overriding objective of the EPA which is the development of the economies of ACP states through closer integration among them and their further integration into the global economy. If full cumulation rights with these FTAs are granted, ECOWAS countries should be cautious of product specific RoO as many of the exemptions and flexibility in the basic rules are defeated by the inclusion of more detailed and often complex product specific RoO.

Conclusion

The series of Lomé Conventions lasted for 25 years over four successive ones. After these, the Cotonou Agreement entered into force in April 2003 to facilitate economic development and tackle poverty, conflict and war, environmental degradation and the risk associated with economic and technological marginalisation. The Cotonou Agreement's trade component aims at promoting sustainable development and intends to eradicate poverty through the negotiation of a series of Economic Partnership Agreements (EPAs) with sub-regional groups in Africa which commenced in 2002. The EPAs are designed to be WTO-compatible free trade agreements, and in this sense are basically reciprocal, with the ultimate aim to progressively remove barriers to EU-ACP trade and foster the regional integration process in Africa. If the EPA negotiations are concluded in December 2007 as scheduled, the agreements would come into force on 1st January 2008 and they would be valid for the next 20 years, but revised every five years. Certainly, the EPA and its rules of origin have implications for national and regional trade policy, and poses great challenges for the administration of the attendant rules of origin, the costs arising from non-conforming RoO

that West African exporters have to comply with, and the institutional requirements of West African countries such as customs reform and similar ports restructuring induced by the coming into force of the agreements.

First, at the regional level, ECOWAS need to have established a common external trade policy such as a customs union with a common external tariff (CET) which is currently planned to come into force on 1st January 2008, thus coinciding with the coming into force of the WA-EU EPA. A CET has additional influence on the form and implementation of rules of origin. This is because though RoO are part of both FTAs and customs union agreements, they play different roles under the two arrangements (Krishna, 2003). National trade policy challenges are concerned with the capacity of each country in West Africa to meet targets for both intra-regional (within west Africa) and inter-regional (with the three other African sub-regional EPA groups) integration in terms of the market access concessions required and the effect that these would have on customs revenue, industrialisation, import surges, and the like. Particularly for rules of origin, each country in West Africa will have to deal with how to address post EPA trade diversion.

Another challenge for which West African exporters need to make preparations on how to deal is the issue of costs of RoO. From an analytical perspective, Krishna (2003) views that the basic effect of RoO is to raise the production costs of the product that meets the binding RoO. According to Krishna and Krueger (1995), RoO specifies binding constraints which affect the choice of inputs used in production which differs from unconstrained choice leading to higher costs if RoO are met. In effect, the more restrictive the RoO, the higher are the minimised costs. By extension, the more the FTAs with RoO, the larger are the costs of meeting their binding constraints. This is more so in respect of the physical content requirement that the RoO contain in terms of FTA input relative to imported input as well as with regard to the fact that the incidence of increased costs falls particularly severely on small and medium-scale firms which are in great numbers in West Africa's low income countries.

The way to deal with the cost-raising aspect of RoO is in ensuring that the negotiations consciously and systematically

manage the rules in such a way to ensure consistency with existing RoO in other FTAs and simplicity in terms of application and administration particularly in the case of specific product rules. This approach underpins the inherent cost-raising nature of RoO, since they are binding, and mitigate rather than try to eliminate it.

There are administrative and institutional challenges arising from administrative requirements and documentary evidence in the application and administration of RoO while coping with these creates additional burden in terms of the financial obligation. It is general knowledge in literature that RoO are expensive to document inducing, thereof, a preference on the part of importers to pay the tariff rather than hassle to meet the required documentation. In the perception of importers, the cost of proving origin exceeds the duty paid (Herin 1986; Krishna 2003). Some of the documentation in existing system of preferences include certificates to indicate use of regional cumulation (under EU-EBA), supplier declaration (under CPA), GSP-Form A (compulsory for all products under EU-EBA), and Form EUR 1 (CPA). Where self-certificating procedures (CPA) are available or where no certificate of origin is required (US GSP), administration of RoO tends to be less complex. RoO have compliance costs for establishing and sustaining arrangements to determine the costs on date of shipment of goods and for regular monitoring of RoO. Apart from documentation, some RoO require regional groups to make application and possess central organisation capable of ensuring administrative cooperation (EU-EBA), and Form A to be stamped by officially designated government authority (EU-EBA). In view of the fact that proliferation of trade agreements with differing RoO further complicates customs procedures, the focus in WA-EU EPA should be on how to streamline and harmonise EPA RoO with existing ones.

Dealing with the financial challenges that the implementation of RoO will induce is a significant consideration in the RoO negotiations in particular and EPA in general. The West African group explicitly needs to attract negotiation attention to the additional financial burden that proving rules of origin under EPA will impose on their customs administration especially in the era of trade facilitation on which complex RoO will

impinge, this with a view to generating explicit modalities for absorbing the costs of adjustment in customs procedures and other port reforms required especially within the nexus of rules of origin and trade facilitation.

The RoO negotiations under WA-EU EPA need to start with an explicit understanding that the basic objective of the EPA for West Africa will be achieved upon the principles that the EPA RoO should not lead to trade suppression and diversion while they need to facilitate the much-sought after diversification of production away from primary commodities and support industrialisation and discourage immiserising growth in the West African sub-region. The framework for negotiating RoO should therefore ensure a systematic approach that precludes complex and difficult to administer rules, as well as permits consistent and unambiguous rules, to bring about increased effective market access through full cumulation which allows West African countries the maximum flexibility in sourcing their inputs and components thereby engendering profound sub-regional integration in line with the overall EPA objective.

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Bibliographical Note

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