

SPOTLIGHT ON THE RULES OF ORIGIN

What are the Rules of Origin, and why do they matter?

Rules of Origin (RoO) are the criteria used to determine the **economic origin** status of a product. RoO form an integral part of preferential trade arrangements, and help to ensure that trade (market access) preferences are correctly linked to imports from a country that has been designated as being eligible receive such preferences. RoO are important and necessary, as in their absence, the likelihood of transshipment would undermine, and essentially make it impossible, for there to be **preferential** trade between countries. Transshipment - in the AGOA context - would be where goods from third countries could simply be shipped to the U.S. via a beneficiary country having more favourable market access to the US, without any substantial processing having taken place in the beneficiary country. RoO help avoid this scenario.

The RoO are the tool used to design appropriate and legislated criteria by which a product's origin is determined; this is based on the premise that only products **originating** in a beneficiary exporting country should receive preferential market access. In order to be considered as 'originating', a product must then either have been grown, extracted or produced exclusively within the exporting country (that is claiming origin status), or alternatively, must have been substantially transformed within that country when the product combines both of local and imported materials. In such scenarios, RoO prescribe the minimum local processing or local content required for a product to obtain economic origin status of the (exporting) country.

What are the Rules of Origin under AGOA?

The RoO form an important part of the 'fine-print' of the AGOA legislation, and all exports from AGOA beneficiary countries are subject to these rules.

The AGOA legislation essentially has two sets of origin rules: RoO criteria for '**general**' goods, and separate criteria for **textiles and apparel** goods. The rules for general goods are those based on the U.S. Generalized System of Preferences (GSP) and apply both to industrial, processed mineral and agricultural goods; while for textiles and apparel, the AGOA legislation contains what is known as the '**wearing apparel**' provisions which set out a number of different product categories and processing criteria, under which AGOA beneficiaries may export goods to the US duty-free. U.S. importers of qualifying textiles must mark the relevant RoO criteria under which textile and apparel are imported, and include a certificate of origin.

Who claims preferential origin status and receives the trade preferences?

The United States based **importer** would clear products sourced from an African AGOA beneficiary country through U.S. customs (unless the African exporter and U.S. importer are the same party), and be liable for any import duties. Where a product qualifies for duty-free market access under AGOA, the importer would mark the relevant customs forms with the special program indicator ('**D' for AGOA**), enter the product's unique HTS tariff code (from the U.S. tariff schedule), and in the case of textile goods, refer to the certificate of origin provided by the exporter that indicates the relevant RoO **category**. While the **importer** claims the duty-preference, the preference margin (the duty saved, when importing under AGOA) results in the **exporter's** product being more competitive in the U.S. market, resulting in a win-win outcome for both the exporter in the AGOA beneficiary country, as well as the U.S. importer.

General goods

AGOA RULES OF ORIGIN - QUALIFYING CRITERIA FOR NON-TEXTILE / GENERAL GOODS

Products are 'originating' in an AGOA beneficiary country when the following conditions are met:

"WHOLLY PRODUCED"

- ⦿ The product must be wholly the growth, product, or manufacture of the AGOA beneficiary country

OR

"SUBSTANTIALLY TRANSFORMED"

- ⦿ The product must be a new or different article of commerce that has been grown, produced or manufactured in the beneficiary country

DIRECT SHIPPING TO THE US

- ⦿ The article must also be imported directly from the AGOA beneficiary country into the customs territory of the U.S.

EXCLUSIONS - INSUFFICIENT PROCESSING

- ⦿ An article can not be considered originating by virtue of only having undergone
 - simple combining operations
 - mere dilution with water or another substance that does not materially alter the substance of the article

Products that are AGOA eligible, and meet the Rules of Origin, qualify to enter the U.S. duty-free

LOCAL PROCESSING CRITERIA

- ⦿ The cost or value of the materials produced in the AGOA beneficiary country or any (two or more such) AGOA countries **PLUS**
- ⦿ The direct costs of processing operations performed in such AGOA country (or countries)
- ⦿ ...must be no less than **35%** of the appraised value of that article at the time it enters the U.S.
- ⦿ Up to 15% (of the 35%) of the appraised value at the time it enters the U.S. may comprise U.S.-originating value and may be applied toward determining the percentage

Note: US Customs will generally appraise the merchandise at the full value of the transaction, which includes the following components:

Packaging costs, selling commission, royalty and licensing fees incurred by a buyer, the value of free assistance that may have been provided to the buyer conditional upon the sale; included under the "direct costs of processing" are the cost of labour, engineering or supervisory quality control, machinery costs

AGOA
Rules of Origin
-General-



www.AGOA.info

U.S. RoO
Legislative Code
AGOA



www.AGOA.info

Textiles and apparel

AGOA RULES OF ORIGIN - QUALIFYING CRITERIA FOR TEXTILE AND APPAREL GOODS

Textiles and apparel are subject to their own Rules of Origin criteria; the 'general' rules do not apply.

Textiles: Yarns, fabric (of Chapters 50-60 and 63) from any AGOA beneficiary country classified as a 'lesser developed beneficiary country' qualify for AGOA preferences provided that they are wholly produced from locally made fibres, yarns, fabrics, or components knit-to-shape in such countries.

Apparel: Products of Chapter 61 and 62 may enter the U.S. duty-free under AGOA provided that the AGOA beneficiary country has implemented the required AGOA apparel visa system, and provided that the products can be classified under one of the following RoO categories (Categories 0 - 9):

⦿ TEXTILES & APPAREL RULES OF ORIGIN CATEGORIES

- Cat 1(A) Apparel from US yarn and fabric, cut in the US
- Cat 2(H) Apparel from US yarn and fabric, cut in the US and further processed
- Cat 3(C) Apparel from US yarn and fabric, cut in Africa
- Cat 4(D) Apparel made from regional fabric made from African or US yarn
- Cat 5(E) Apparel made in a **lesser-developed country (LDC) from foreign fabric ('3rd country fabric')**
- Cat 6(F) Cashmere sweaters
- Cat 7(G) Merino wool sweaters
- Cat 8 (H) Apparel from fabric or yarn in short supply
- Cat 9 (I) Handloomed, handmade, folklore articles
- Cat 0 (J) Textile articles of Ch 50-60, 63 made in a LDC beneficiary country from AGOA country inputs

⦿ OTHER CRITERIA

Quantitative restrictions:

By law, AGOA limits imports of apparel made with regional or third country fabric to a fixed percentage of the total square meter equivalents (SME) of all apparel articles imported into the US.

Given the large size of this quota, AGOA imports have to date never been at any real risk of exceeding it and therefore remain unconstrained by any quantitative restrictions.

Findings, trimmings, interlinings, de minimis:

The AGOA legislation provides a 25% allowance on certain non-originating components (10% for fibers and yarns, as relevant). More details are available at the link alongside.

Well over 90% of all apparel exports since 2001 (the year when the first AGOA countries qualified for apparel preferences) entered the U.S. duty-free under AGOA. Category 5(E) - the provision which allows lesser developed beneficiary countries to utilize 3rd country fabrics - was used for most exports.

AGOA
Rules of Origin
-for Apparel-



www.AGOA.info

AGOA
Apparel Trade
Data



www.AGOA.info



Scan the code with your phone camera or use any QR reader app.