



## **‘Phase 1B’ of the African Continental Free Trade Area (AfCFTA) negotiations**

**By Peter Lunenborg\***

### **1. African Continental Free Trade Area (AfCFTA) Agreement**

The African Continental Free Trade Area (AfCFTA) Agreement is one of the flagship projects of the First Ten Year Implementation Plan under the African Union (AU) Agenda 2063 – ‘The Africa We Want’. The AfCFTA negotiations have been split up into two phases:

- Phase 1 covers the areas of trade in goods and trade in services.
- Phase 2 will cover the areas of Investment, Intellectual Property Rights and Competition Policy.

The institutions involved in the negotiations are the AfCFTA-Negotiating Forum (AfCFTA-NF), Senior Trade Officials (STOs) and African Union Ministers of Trade

(AMOT). The first meeting of the AfCFTA-NF was held in February 2016, followed by the first meetings of the STO and AMOT both of which were held in May 2016.

The 28th Ordinary Session of the African Union Heads of State and Government held in Addis Ababa, Ethiopia in January 2017 mandated His Excellency Issoufou Mahamadou, President of the Republic of Niger, to be the Leader of the African Continental Free Trade Area (AfCFTA) Negotiations.

The Agreement Establishing the AfCFTA together with three Protocols (on trade in goods, trade in services and dispute settlement) were adopted by the AU Assembly on 21 March 2018 in Kigali, Rwanda. Annexes to the Protocol on Trade and Goods and the Protocol on Rules of Procedures for the Settlement of Disputes were adopted by the Assembly on 1 July 2018 in Nouakchott, Mauritania. (See Table 1.)

### **Abstract**

The African Continental Free Trade Area (AfCFTA), which entered into force on 30 May 2019, represents a unique collaborative effort by African countries to bolster regional and continental economic integration, in a world marked by increasing protectionism and use of unilateral trade measures.

In order to make the agreement operational for trade in goods, negotiations on tariff concessions need to be concluded and negotiating outcomes need to be inserted into the agreement. This policy brief focuses on the expected economic impacts of tariff liberalization under the AfCFTA, the tariff negotiation modalities and discusses some legal and practical issues related to the implementation of these modalities.

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*Dans un monde marqué par un protectionnisme croissant et le recours à des mesures commerciales unilatérales, l'Accord prévoyant la création de la zone de libre-échange continentale (ZLEC), qui est entré en vigueur le 30 mai 2019, représente un effort unique de collaboration entre les pays africains en vue de renforcer l'intégration économique à l'échelle régionale et continentale.*

*Afin de le rendre opérationnel pour le commerce des marchandises, il est essentiel que des négociations sur les concessions tarifaires aient lieu, dont les résultats devront être pris en compte dans l'Accord. La présente note de synthèse s'intéresse aux répercussions économiques liées à la libéralisation tarifaire qui sont attendues dans le cadre de l'application de l'Accord et aux modalités de négociation tarifaire, et examine certains aspects juridiques et pratiques relatifs à la mise en place de ces modalités.*

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*La Zona de Libre Comercio Continental Africana (AfCFTA, por sus siglas en inglés), que entró en vigor el 30 de mayo de 2019, representa un esfuerzo de colaboración único por parte de los países africanos para reforzar la integración económica regional y continental, en un mundo caracterizado por el aumento del proteccionismo y el uso de medidas comerciales unilaterales.*

*A fin de que el acuerdo sea operativo para el comercio de mercancías, es necesario concluir las negociaciones sobre las concesiones arancelarias e incorporar al acuerdo los resultados de dichas negociaciones. Este informe de políticas se centra en las repercusiones económicas que se prevé que genere la liberalización arancelaria en el marco de la AfCFTA y en las modalidades de negociación arancelaria, y analiza algunas cuestiones jurídicas y prácticas relacionadas con la aplicación de estas modalidades.*

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**Table 1 – Outcome of Phase 1 negotiations**

Agreement Establishing the African Continental Free Trade (AfCFTA)		
Protocol on Trade in Goods	Protocol on Rules and Procedures for the Settlement of Disputes	Protocol on Trade in Services
<ul style="list-style-type: none"> <li>• (Annex 1 on Schedules of Tariff Concessions)*;</li> <li>• Annex 2 on Rules of Origin<sup>i</sup>;</li> <li>• Annex 3 on Customs Cooperation and Mutual Administrative Assistance;</li> <li>• Annex 4 on Trade Facilitation;</li> <li>• Annex 5 on Non-Tariff Barriers;</li> <li>• Annex 6 on Technical Barriers to Trade;</li> <li>• Annex 7 on Sanitary and Phytosanitary Measures;</li> <li>• Annex 8 on Transit; and</li> <li>• Annex 9 on Trade Remedies.</li> </ul>	<ul style="list-style-type: none"> <li>• Annex 1 on Working Procedures of the Panel;</li> <li>• Annex 2 on Expert Review;</li> <li>• Annex 3 on Code of Conduct for Arbitrators and Panelists.</li> </ul>	<ul style="list-style-type: none"> <li>• (Schedules of Specific Commitments)*;</li> <li>• (Most Favoured Nation (MFN) Exemptions)*;</li> <li>• (Air Transport Services)*;</li> <li>• (List of Priority Sectors)*<sup>ii</sup>;</li> <li>• (Framework document on Regulatory Cooperation)*.</li> </ul>

<sup>i</sup> Annex 2 on Rules of Origin has four Appendices: Appendix I on AfCFTA Certificate of Origin, Appendix II on AfCFTA Origin Declaration, Appendix III on AfCFTA Supplier or Producer's Declaration and Appendix IV on AfCFTA Rules of Origin (to be inserted)

<sup>ii</sup> Agreement has been reached to focus initially on the following five (broad) service sectors: financial, telecommunication, transport, tourism, and business services.

\*To be inserted

Source: African Union Commission (AUC) presentation during Dedicated Session of Negotiating Forum, 18 March 2019

The AfCFTA Agreement stipulates that the AfCFTA enters into force 30 days after deposit of the 22<sup>nd</sup> deposit of the instrument of ratification. The AfCFTA entered into force on 30 May 2019 as the 22<sup>nd</sup> deposit took place on 29 April 2019.<sup>1</sup>

For its operationalization, agreement would need to be reached particularly in the following areas:

- Rules of origin
- Schedules of tariff concessions on trade in goods
- Annexes to the Protocol on Trade in Services, including the schedules of concessions on trade in services.

The focus of these 'Phase 1B' negotiations will be tariff negotiations. Section 2 of the paper explores available research on the expected economic impact of tariff liberalization under the AfCFTA. Section 3 explains the agreed tariff negotiation modalities. Section 4 raises some legal issues with the AfCFTA and Section 5 raises some specific issues with respect to the tariff negotiations. Section 6 provides a conclusion.

## 2. Expected economic impact of AfCFTA

### 2.1 Overall impact on Africa

While the AfCFTA itself has been signed and is being

ratified by an increasing number of African countries, the Parties have yet to negotiate the tariff concessions under the AfCFTA. Therefore impacts can only be estimated on the basis of models. The most often used type is the so-called Computable General Equilibrium (CGE) model.

The CGE simulations that have been employed generally paint a rosy picture of the AfCFTA. Indicators such as gross domestic product (GDP), employment and intra-African trade would increase for the continent.

Some headline Africa-wide results include the following:

- GDP would grow by 0.66-0.97 percent and employment by 0.82-1.17 percent.<sup>2</sup>

- Real wages would increase, and increase more for 'unskilled' labourers (0.74 percent in agriculture, 0.8% in non-agricultural sectors) compared to 'skilled' labourers (0.54 percent).<sup>3</sup>

- Growth in intra-African trade is estimated at 24 to 33 percent (Saygili et al., 2018). There appears to be consensus that the share of intra-African trade would not double within the next 10 years on account only of the AfCFTA, as wished by AU member States. This finding prompted Mevel and Karingi (2012) to argue for measures complementary to tariff elimination.

The largest employment growth rates are found in the manufacturing industry followed by some services and agriculture subsectors (Saygili et al., 2018). As intra-African trade has a higher skill and technology content than Africa's trade with others, the AfCFTA can improve diversification, and the industrial product and technology content of AU member States' exports. In that context, liberalization of trade within the African continent has merits.

However, these headline figures for the whole of Africa mask the distributional impacts of tariff liberalization under AfCFTA between as well as within countries (in terms of sectors, income groups, gender). Some of these impacts might be mitigated by a carefully calibrated schedule of tariff concessions.

Such calibration might also involve the development of customized offers to different countries. Products might be sensitive if originating from certain countries, but not from others, depending on the (relative) competitiveness of producers in the concerned countries.

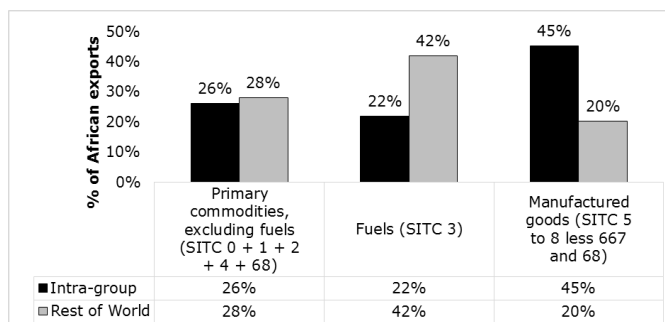
## 2.2 Adjustment costs

Studies point out that there are various short term losses, in particular tariff revenue losses. According to Saygili et al. (2018) Africa-wide tariff revenue loss would be equivalent to between 7.2 percent (free trade agreement (FTA) with 'Special Product Categorization') to 9.1 percent of current revenues (a 'full FTA').

The presumption is often that the long-term benefits are greater than the short-term losses and other adjustment costs. Table 2 below shows the various components of adjustment costs.

Trade liberalization can have a negative impact on labour in the short and medium term, especially if these sectors were protected. Labour mobility across sectors is limited in developing countries.<sup>4</sup> In other

**Graph 1 - Structure of Africa's exports to its internal market vs Rest of World (2015-2017)**



Source: UNCTADStat (<http://unctadstat.unctad.org/>), Table 'Merchandise: Intra-trade and extra-trade of country groups by product, annual', using data from the years 2015 to 2017.

Note: SITC stands for Standard International Trade Classification.

words, tariff elimination under the AfCFTA might cause unemployment and lower wages in certain sectors and involve increased health care costs and costs for retraining. This may create social tensions and problems unless compensatory or 'flanking' measures are set in place.

Besides labour costs, other adjustment costs can include the lower utilization of productive assets and the need to make new investments in order to respond to new competitive conditions.

Many types of adjustment costs are difficult to model, among others due to the lack of data, and therefore the results of CGE simulations, especially for the long term, need to be interpreted with caution. As the famous British economist J.M. Keynes once wrote: "(the)...long run is a misleading guide to current affairs. In the long run we are all dead. Economists set themselves too easy, too useless a task, if in tempestuous seasons they can only tell us, that

**Table 2 - Components of adjustment costs**

Private adjustment costs	Labour	<ul style="list-style-type: none"> <li>• Unemployment</li> <li>• Lower wage during transition</li> <li>• Obsolescence of skills</li> <li>• Costs for (re)training</li> <li>• Health care costs</li> <li>• Personal costs (e.g. mental suffering)</li> </ul>
	Capital	<ul style="list-style-type: none"> <li>• Underutilized capital</li> <li>• Obsolete machines or buildings</li> <li>• Transition cost of shifting capital to other activities</li> </ul>
Public sector adjustment costs		<ul style="list-style-type: none"> <li>• Lower tax revenue</li> <li>• Social safety net spending</li> <li>• Implementation costs of trade reform</li> </ul>

Source: Adapted from Francois, Jansen, Peters, 'Trade, Adjustment Costs and Assistance: The labour market dynamics' (2011) at page 6.

when the storm is long past, the ocean is flat again."<sup>5</sup>

### 2.3 AfCFTA adjustment/compensation facility

While tariff elimination under the AfCFTA is expected to be generally positive and its negative impact muted due to relatively low levels of intra-African trade, any trade agreement generates distributional effects within countries and across countries. The AfCFTA will generate winners and losers.

It would be important to monitor the implementation of the agreement, and provide adjustment assistance and/or compensate countries that are the 'losers' from this process. Tariff revenue losses incurred by elimination of tariffs on imports from other African countries might not always be recouped, either through introduction of other taxes or increased economic activity. In such scenario, there is a case for a facility at the African level to compensate the 'losing' countries or help them adjust.

Within African Regional Economic Communities (RECs), broader regional integration support programmes have been implemented that go beyond compensation. Compensation to Rwanda and Burundi for the adoption of the East African Community (EAC) Customs Union and the Common External Tariff was implemented by the Common Market for Eastern and Southern Africa (COMESA) through the Regional Integration Support Mechanism (RISM) programme, which also supported infrastructure development and broader adjustment objectives. In CEMAC (Economic and Monetary Community of Central Africa), fiscal compensation is allocated 40% of funds from the *Fonds de Développement de la Communauté* (FODEC) while 60% is to target regional integration projects (including infrastructure). The Economic Community of West African States (ECOWAS) Regional Development Fund (ERDF) has been responsible for lending to support regional infrastructure projects as well as fiscal compensation.

## 3. The AfCFTA tariff negotiation modalities

### 3.1 Tariff negotiation modalities: the framework for negotiations

Most elements of the Modalities for Tariff Liberalization were agreed by September 2017.<sup>6</sup> These modalities provide a framework for negotiations. The most important elements include the following:

- Negotiating parties - who will negotiate? Individual member States or customs unions.
- Categories of products. Countries should assign products to 3 product groups/lists: 'Non-Sensitive' products, 'Sensitive' products and the 'Exclusion List'. The difference between 'non-sensitive' and 'sensitive' products is a longer timeframe for implementation for 'sensitive' products. Least developed countries (LDCs) will enjoy a longer timeframe for implementation compared to non-LDCs, for sensitive as well as non-sensitive products.

- The size of the non-sensitive product list (in terms of tariff lines). The 'Non-Sensitive' product list will account for 90% of tariff lines.

- Timeframe for implementation. Tariffs on non-Sensitive Products to be eliminated after 5 years (non-LDCs) or 10 years (LDCs). Tariffs on Sensitive Products to be eliminated after 10 years (non-LDCs) or 13 years (LDCs). A group of countries ('Special Needs' or 'G7') has additional flexibility to liberalize 85% of tariff lines in 10 years and the other 5% of tariff lines in 15 years, for Non-Sensitive Products.<sup>a</sup>

- Base rate. The basis for negotiations will be the MFN rate as of entry into force of the AfCFTA (i.e. 2019).

In December 2018, several outstanding elements were agreed:

- The size of the sensitive product list (in terms of tariff lines) - 7%
- The size of exclusion list (in terms of tariff lines) - 3%
- Additional criteria to ensure that countries effectively liberalize and do not concentrate exclusions in tariff lines with imports, sometimes referred to as 'anti-concentration clause', or 'double qualification': the exclusion list cannot represent more than 10% of imports.

Table 3 provides a summary of the level of liberalization and timeframes for liberalization.

Several issues are ambiguous or need attention, in particular

- To whom are offers made (see Section 5.1 below)
- The treatment of LDCs in customs unions. According to the modalities, LDCs and non-LDCs have different timeframes for implementation but in a customs union both LDCs and non-LDCs in that customs union must apply the same timeframes for implementation, if a common external tariff is to be maintained (see Section 5.2 below).

### 3.2 Liberalisation under AfCFTA modalities in comparison with other trade agreements between developing countries

According to the agreed modalities, tariff agreements between African countries under the AfCFTA will eventually liberalize at least 97% tariff lines and 90% of imports at the end of their implementation period. In other words, duties will remain on maximum 3% of tariff lines and 10% of imports.

How does this level of liberalization compare with other trade agreements between developing countries? To answer this question, data is compiled from the factual presentations of FTAs between developing countries that are notified to the World Trade Organization (WTO). Each factual presentation usually contains a subsection called "Liberalization of trade and tariff lines" (in the section 'Provisions on trade in goods').

In order to arrive at a good benchmark, only FTAs

**Table 3 – AfCFTA tariff negotiation modalities: Level of liberalization and timeframes for implementation**

Product Group	Level of Ambition for all State Parties	Timeframe for Implementation		
		Non-LDCs	LDCs	Special Needs/G-7 <sup>a</sup>
<b>Non-Sensitive Products</b>	Not less than 90 per cent of tariff lines	5 years	10 years	10 years for 85 per cent of tariff lines; 15 years for additional 5 percent of tariff lines (may be phased from year 11 to year 15)
<b>Sensitive Products</b>	Not more than 7 per cent of tariff lines	10 years	13 years	13 years
		Liberalisation of sensitive products may commence in year 6, or earlier for those State Parties willing to do so.		
<b>Exclusion List</b>	<ul style="list-style-type: none"> <li>• Not more than 3 percent of tariff lines<sup>8</sup></li> <li>• Exclusion list shall at maximum constitute 10 percent of the value of imports from other African countries based on a 3-year reference period (2014-2016 or 2015-2017).</li> <li>• Subject to a review process after 5 years</li> </ul>			

Note: <sup>a</sup> At moment of publication, the G-7 flexibility has not been fully resolved and might be subject to change.

which entered into force in 2007 or later are considered for analysis. Also, all parties to the FTA must be developing countries. In the compilation, FTAs with Organisation for Economic Co-operation and Development (OECD) countries (including Chile, Mexico, Korea), Chinese Taipei, Hong Kong and Singapore are not considered. Some exceptions were made, such as the Association of Southeast Asian Nations (ASEAN)-India FTA (which includes Singapore) and the Mexico-Central America FTA.

Both agreements notified under Article XXIV of the General Agreement on Tariffs and Trade (GATT) as well as the Enabling Clause were included in the compilation. The Enabling Clause has less strict requirements, among others, as it does not require tariff liberalization to take place for 'substantially all trade'. With respect to the AfCFTA, there has been agreement that it

should comply with Article XXIV.<sup>9</sup>

### Results

The results show that the share of tariff lines that remains dutiable is higher for agreements notified under the Enabling Clause compared to those under Article XXIV. (See Table 4.) For Enabling Clause Agreements, the share is on average 31.5% (i.e. 68.5% liberalization) but around 21% (i.e. 79% liberalization) for the most recent agreements with a factual presentation prepared by the WTO Secretariat (in 2010 and 2011).

Turning to FTAs notified to WTO under Article XXIV GATT, the share of tariff lines that remains dutiable is on average 6.6% for the analyzed agreements. In more recent years this share is lower (2.2%, 5.5%). In other words, an average Article XXIV-notified developing country FTA that entered into force in 2007 or later liberalizes 93.4% of

**Table 4 - Developing country FTAs - Share of tariff lines that remain dutiable (%)**

Year of entry into force	Developing country FTAs notified to WTO under Enabling Clause	Developing country FTAs notified to WTO under Article XXIV GATT	All developing country FTAs notified to WTO
2007	18		18
2008	40.2		40.2
2009	88.3	14.3	43.9
2010	21.2	6.8	19.9
2011	21	10.4	13.9
2012		2.2	2.2
2013		5.5	5.5
2015		3.3	3.3
2016		4.8	4.8
<b>Average for all FTAs</b>	<b>31.5</b>	<b>6.6</b>	<b>19.1</b>

Source: compiled on the basis of WTO Factual Presentations

**Table 5 - Developing country FTAs - Share of imports (value) that remain dutiable (%)**

Year of entry into force	Developing country FTAs notified to WTO under Enabling Clause	Developing country FTAs notified to WTO under Article	All developing country FTAs notified to WTO
2007	8.8		8.8
2008	50.4		50.4
2009	61.8	18.1	35.6
2010	22.4	5	20.8
2011	30.7	7.8	15.4
2012		4.3	4.3
2013		7.8	7.8
2015		16.8	16.8
2016		13.4	13.4
<b>Average for all FTAs</b>	<b>25.3</b>	<b>12.1</b>	<b>18.7</b>

Source: compiled on the basis of WTO Factual Presentations

tariff lines. For more recent FTAs, i.e. those that entered into force 2012 or later this percentage is even higher (95-97%).

The share of imports (value) that remains dutiable for an average developing country FTA notified under Article XXIV is 12.1%, i.e. a liberalization of around 88% in terms of value. In contrast to liberalization in terms of tariff lines (the number of different goods for which tariffs are eliminated), there is no obvious downward trend in the liberalization as measured in terms of value. (See Table 5.)

In conclusion, based on the levels of liberalization of implemented developing country FTAs, the AfCFTA tariff modalities are quite ambitious.

#### 4. Some legal issues with the AfCFTA

##### 4.1 Relationship between AfCFTA and African regional trade agreements

Article 19 of the Agreement establishing the AfCFTA regulates the relationship with the RECs:

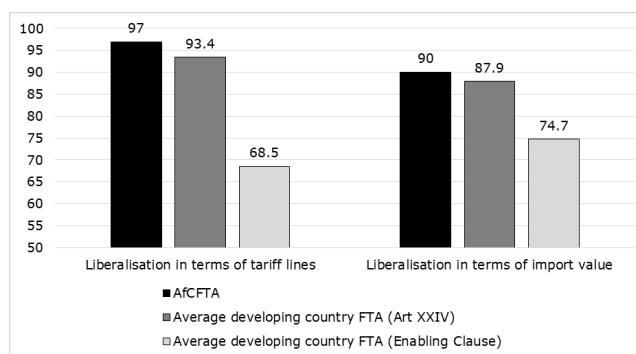
**Article 19**

**Conflict and Inconsistency with Regional Agreements**

In the event of any conflict and inconsistency between this Agreement and any regional agreement, this Agreement shall prevail to the extent of the specific inconsistency, except as otherwise provided in this Agreement.

Notwithstanding the provisions of Paragraph 1 of this Article, State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves.

**Graph 2 – Tariff liberalisation under AfCFTA tariff modalities and developing country FTAs (%)**



The implication of the first paragraph is that, in case of inconsistencies, the provisions of the AfCFTA will apply. Nevertheless, the second paragraph provides for an exemption from this general rule in cases of 'higher levels of regional integration' for members of 'regional economic communities, regional trading arrangements and custom unions'.

How would this function in the area of tariffs? It would mean that a tariff eliminated for a product under an existing agreement will apply regardless of what is agreed in the AfCFTA tariff negotiations. This also includes the associated phase out periods (see Table 6).

In order to reduce complexity, there are several choices. The first option would be to only provide tariff concessions under AfCFTA for countries with whom no existing preferential arrangement exists. The second option would be to integrate the preferences under existing agreements into the AfCFTA. In the second option, a country could effectively be liberalizing more than what is required under the modalities, as it would have to provide preferences under AfCFTA as well as tariff concessions under existing agreements not included in AfCFTA. It is therefore expected that African countries/customs unions

**Table 6 - Applicable tariffs under existing agreements and AfCFTA**

Tariff line liberalized under existing agreement between Parties	Tariff line liberalized under AfCFTA	Applicable tariff?
Yes	Yes	As per AfCFTA, with transition period as per existing agreement (otherwise the AfCFTA would be method to delay implementation of already agreed tariff concessions)
Yes	No	As per existing agreement for existing agreement between Parties. For other African countries, MFN tariff applies.
No	No	MFN tariff
No	Yes	As per AfCFTA

would initially make offers to countries outside existing preferential arrangements.

#### 4.2 Most Favoured Nation treatment

Article 37 of the Treaty establishing the African Economic Community, also referred to as the Abuja Treaty<sup>10</sup> provides that

i) The best treatment provided to an African country should be accorded to all African countries

ii) If African countries provide a tariff preference to a non-African country, such tariff preference must be provided to all African countries:

#### Article 37 - Most Favoured Nation Treatment

1. Member States shall accord one another, in relation to intra-community trade, the most-favoured-nation treatment. In no case shall tariff concessions granted to a third State pursuant to an agreement with a Member State be more favourable than those applicable pursuant of this Treaty.

2. The text of the agreements referred to in paragraph 1 of this Article shall be forwarded by the Member States parties thereto, through the Secretary-General, to all the other Member States for their

information.

3. No agreement between a Member State and a third State, under which tariff concessions are granted, shall be incompatible with the obligations arising out of this Treaty.

This legal commitment was also incorporated as one of the principles for the AfCFTA negotiations under MFN treatment, agreed by Ministers in 2016<sup>11</sup>:

“Member States shall accord one another, in relation to intra-community trade, the most favoured nation treatment. Any more favourable trade concession accorded to third parties shall be granted to other Member States.”

Strict application of this rule would be difficult for various countries. For instance, Tunisia and Egypt have liberalized all their imports from Jordan, a third/non-African country (see Table 7). This implies that according to Article 37.1 of the Abuja Treaty, Egypt and Tunisia must give duty free access to imports from all African countries, without requiring reciprocity from these countries.

Against this backdrop, the Agreement establishing the AfCFTA contains an article titled ‘Continental Preferences’ which essentially reduced the legal commitment contained in Article 37.1 of the Abuja Treaty:

**Table 7 - Share of tariff lines and imports that remain dutiable for the 3 African countries party to the Agadir Agreement**

Country	Partner (Country where imports originate)	Share of tariff lines that remain dutiable (%)	Share of imports (value) that remains dutiable (%)
Tunisia	Egypt	0	0
Tunisia	Jordan	0	0
Tunisia	Morocco	0	0
Morocco	Tunisia	8.7	2.7
Morocco	Jordan	8.7	2.2
Morocco	Egypt	8.7	2.4
Egypt	Jordan	0	0
Egypt	Morocco	0	0
Egypt	Tunisia	0	0

**Article 18 of AfCFTA Agreement -  
Continental Preferences**

1. Following the entry into force of this Agreement, State Parties shall, when implementing this Agreement, accord each other, on a reciprocal basis, preferences that are no less favourable than those given to Third Parties.
2. A State Party shall afford opportunity to other State Parties to negotiate preferences granted to Third Parties prior to entry into force of this Agreement and such preferences shall be on a reciprocal basis. In the case where a State Party is interested in the preferences in this paragraph, the State Party shall afford opportunity to other State Parties to negotiate on a reciprocal basis, taking into account levels of development of State Parties.
3. This Agreement shall not nullify, modify or revoke rights and obligations under pre-existing trade agreements that State Parties have with Third Parties.

The implications of Article 18 appear to be the following:

- No obligation to accord the most favourable treatment given to one African country to other African countries. Article 18 applies to preferences extended to third parties.
- The MFN clause only applies to future trade agreements between African and non-African countries. This means for instance that the MFN commitment does not apply to the Agadir Agreement.<sup>12</sup> However, it would apply to countries that are party to an Economic Partnership Agreement (EPA) with the European Union (EU) that will enter into force after the AfCFTA enters into force.
- The extension of preferences is not automatic but subject to reciprocity. This means that another African country can only claim a preference if it gives something in exchange. In a way this inhibits other African countries to benefit from preferences given by an African country to a non-African country. In this context, the 32nd Ordinary Summit of January 2019 “decided that Member States wishing to enter into partnerships with third parties should inform the Assembly with assurance that those efforts will not undermine the African Union vision of creating one African market”.<sup>13</sup>

In conclusion, in the area of AfCFTA tariff negotiations where parties liberalize on a reciprocal basis, Article 18 could be of some use for some African countries negotiating with other African countries that have (future) agreements with non-African countries, as it gives the former more leverage in demanding the liberalization of certain tariff lines.

**4.3 Making schedules of concessions an integral part of the AfCFTA**

Article 7 of the AfCFTA, ‘Schedules of Tariff Concessions’ stipulates that “each State Party shall apply pref-

erential tariffs to imports from other State Parties in accordance with its Schedule of Tariff Concessions contained in Annex 1 to this Protocol and in conformity with the adopted tariff modalities.”

Pursuant to Annex 1 (paragraph 2), “the Schedules of Tariff Concessions shall, once adopted by the Assembly, be appended to this Annex and shall apply to trade among State Parties upon the entry into force of the Agreement in accordance with Article 23 of the Agreement.”

The current text implies that tariff concessions would be effective immediately upon adoption by the Assembly once the Agreement establishing the AfCFTA enters into force. In other words, agreed tariff concessions do not need to undergo a new ratification procedure for them to have legal effect. While this appears expedient, in reality the parliaments in several African countries would probably want to scrutinize agreed tariff concessions, as this is considered the ‘meat’ of the agreement, as far as it concerns trade in goods.

Furthermore, the current text appears to imply that the adoption of the Schedules of Tariff Concessions is a one-time event. In reality, it would be a challenge to gather all tariff concessions in a big package for adoption by the Assembly, and it would be more probable that the results may take place in steps.

**4.4 Rules of Origin**

With respect to rules of origin, the outstanding issues, i.e. the issues on which negotiations are yet to be concluded, are listed in Article 42.1 (‘Transitional Arrangements’) of Annex 2 on Rules of Origin. This includes the substantive rules of origin, as well as various other issues such as treatment of products from Special Economic Zones. Rules of origin will be used to determine the applicability of preferential tariff treatment under the AfCFTA and are also important for the application of trade remedies. The Rules of Origin procedures have been agreed, such as the documentation that need to be submitted to prove origin.

In the absence of agreed substantive rules of origin under the AfCFTA, Article 42.3 stipulates that “Pending the adoption of the outstanding provisions, State Parties agree that the Rules of Origin in existing trade regimes shall be applicable.”

This provision appears to safeguard the status quo. At present, a country or customs union might apply different rules of origin depending on the declarations by the importer:

- Non-preferential rules of origin (for MFN imports)
- Rules of origin under regional or bilateral African trade agreements such as the Southern African Development Community (SADC), COMESA, EAC, ECOWAS, or the Morocco-Tunisia FTA.
- Rules of origin under FTAs with non-African countries, such as the Eastern and Southern Africa (ESA)-EU EPA.



At present, the AfCFTA has agreed rules of origin procedures. Once the AfCFTA enters into force, this implies that countries that have ratified the AfCFTA are legally required to make available the following documents for usage by traders: AfCFTA Certificate of Origin (Appendix I), AfCFTA Origin Declaration (Appendix II) and AfCFTA Supplier or Producer's Declaration (Appendix III).

AfCFTA Certificates of Origin shall be issued by a Designated Competent Authority of the exporting State Party on application having been made in writing by the Exporter or, under the Exporter's responsibility, by his authorised representative (Article 19.1 of Annex 2 on Rules of Origin). The AfCFTA Origin Declaration (Appendix II) can be used by 'approved exporters' (as per Article 20) as well as 'any Exporter for any Consignment consisting of one or more packages containing originating Products whose total value does not exceed five thousand US dollars (USD5,000)'. The Origin Declaration is considered a trade-facilitative instrument compared with a Certificate of Origin as it involves lower resource requirements for exporters.

The agreed rules of origin procedures in conjunction with the Transitional Arrangements (in particular Article 42.3, 'Pending the adoption of the outstanding provisions, State Parties agree that the Rules of Origin in existing trade regimes shall be applicable') raise some questions such as:

- For consignments of up to USD 5,000, could exporters from African countries dispense with providing a Certificate of Origin to customs authorities (if that was previously required) and instead fill in the Origin Declaration?
- Could a trader claim applicability of rules of origin contained in an existing FTA that are better than the non-preferential rules of origin? E.g could an importer in Egypt claim applicability of the COMESA rules of origin to products coming from South Africa (not part of COMESA), since COMESA is an 'existing trade regime' of Egypt?

After conclusion of negotiations on the substantive rules of origin, they would be added to Appendix IV ('AfCFTA Rules of Origin') of Annex 2 on Rules of Origin to the Agreement establishing the AfCFTA. How and when would these rules of origin be made legally effective? According to general rules in Articles 28 and 29, the Agreement establishing the AfCFTA is subject to quinquennial reviews which would result in recommendations for amendments, to be adopted by consensus by State Parties. Adopted amendments will enter into force after ratifications by at least 22 State Parties (Article 23 of the Agreement establishing the AfCFTA).

With respect to outstanding issues on rules of origin, State Parties opted for a faster approach, instead of waiting for the next 5 year interval in 2024. Article 42.2 states that "the outstanding provisions referred to in

paragraph 1 of this Article shall, upon adoption by the Assembly, form an integral part of this Annex." Yet, this specific rule is silent on when the result of negotiations on the substantive rules of origin and other outstanding issues would enter into force, i.e. when it would be legally binding on the State Parties. This seems to imply that ratification of the results on the outstanding issues on rules of origin is not needed, as ratification of the initial text covers also whatever is the negotiated outcome in this area.

## **5. Tariff negotiations**

The January 2019 AU Summit requested the African Union Ministers responsible for trade to submit the Schedules of Tariff Concessions in line with agreed modalities to the July 2019 summit.<sup>14</sup>

While the end point is clear there are some remaining questions before the achievement of the final objectives. Implementation of the modalities could involve many bilateral tariff negotiations, implying that it could take more time to finalize the tariff schedules.

### **5.1 Negotiating partners - who will make and receive offers?**

The tariff modalities state the following about the negotiating parties:<sup>15</sup>

*"10. Member States participating in RECs that are not Customs Unions at the regional level shall negotiate tariff liberalisation with other Member States as individual States.*

*11. Member States that belong to a Customs Union shall negotiate collectively."*

The operational customs unions on the African continent include the Economic Community of West African States (ECOWAS), the East African Community (EAC) and the Southern African Customs Union (SACU). The Economic Community of Central African States (ECCAS-CEEAC), one of the eight Regional Economic Communities (RECs) designated by the African Union as pillars for the implementation of the African Economic Community is in the process of establishing a common external tariff, which is a prerequisite for tabling a common offer. The Economic and Monetary Community of Central Africa (CEMAC), a subset of six countries within ECCAS, has not yet pronounced itself whether its member States will negotiate collectively or as individual member states. All the other countries would have to negotiate individually.

If this is to be executed to the letter, the number of negotiations will be enormous. In a scenario where ECOWAS, EAC and SACU negotiate collectively and all the other countries (29) negotiate individually, the implementation of the modalities would involve 496 tariff negotiations. If CEMAC as a 6-country grouping would negotiate collectively the number would drop to 351 tariff negotiations, which is still a very high number (see Tables 8.1 and 8.2).

In reality, there would be a lower number of tariff negotiations because of the following:

**Table 8—Number of tariff negotiations (permutations)**

**Table 8.1—Scenario 1: ECOWAS, EAC and SACU negotiate collectively, the rest individually**

Entity	Number of States
Africa	55
ECOWAS	15
EAC	6
SACU	5
Subtotal	26
Other countries negotiating as individual States	29 (55-26)

<b>Number of negotiations</b>	<ul style="list-style-type: none"> <li>• Between customs unions and member states - <math>3 \times 29 = 87</math></li> <li>• Between member states - <math>(29 \times 28)/2 = 406</math></li> <li>• Between customs unions - <math>(3 \times 2)/2 = 3</math></li> </ul> <p>Total number of negotiations = <math>87 + 406 + 3 = 496</math></p>
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Note: The total number of links is equal to  $55 \times 54$  (2,970), but a bilateral negotiation has 2 parties. So if all African countries would negotiate individually, the maximum number of negotiations would be  $55 \times 54 / 2 = 1,485$ .

**Table 8.2—Scenario 2: ECOWAS, EAC, SACU and CEMAC negotiate collectively, the rest individually**

Entity	Number of States
Africa	55
ECOWAS	15
EAC	6
SACU	5
CEMAC (not certain)	6
Subtotal	32
Other countries negotiating as individual States	23
<b>Number of negotiations</b>	<ul style="list-style-type: none"> <li>• Between customs unions and member states - <math>4 \times 23 = 92</math></li> <li>• Between member states - <math>(23 \times 22)/2 = 253</math></li> <li>• Between customs unions - <math>(4 \times 3)/2 = 6</math></li> </ul> <p>Total number of negotiations = <math>92 + 253 + 6 = 351</math></p>

- Countries or customs union might decide not to make offers to countries with whom they already have a preferential trade agreement. For instance, EAC and Egypt are already negotiating tariff preferences under the umbrella of the Tripartite FTA. Tunisia and Morocco already have an existing FTA.

- Countries might consider to make common offers (for instance in Central Africa) or to align with an offer of another country or customs union (possibly Mauritania with ECOWAS).

### 5.2 The treatment of LDCs in customs unions

According to the modalities, LDCs and non-LDCs have different timeframes for implementation but in a customs union both LDCs and non-LDCs in that customs

union must apply the same timeframes for implementation, if a common external tariff is to be maintained.

The main options that have been discussed at various occasions by negotiators for customs unions with LDCs are:

A. Apply the shorter timeframe for implementation (5 years for 'Non-Sensitive' Products) applicable to non-LDCs under the AfCFTA tariff negotiation modalities to all countries which are part of the customs union.

B. Apply the longer timeframe for implementation applicable to LDCs (10 years for 'Non-Sensitive' Products) to all countries which are part of the customs union.

C. Apply a timeframe for implementation somewhere

between 5 and 10 years for all countries which are part of the customs union.

SACU members have indicated a preference for option A, whereas others have made suggestions along the lines of either option B or C. The EAC, which is entirely composed of LDCs except for Kenya appears to have a preference for option B. Option B also implies that non-LDCs would benefit from a longer implementation period. In the negotiations, some have argued that this would be against the modalities and asserted that only Option A would be in full conformity with the modalities – the modalities provide for minimum requirements and permit Member States to do more. The suggestion has been made that affected customs unions should establish or strengthen an internal compensation mechanism for the LDCs.

The fact remains that option A is likely to be unacceptable for several LDCs within customs unions. The 7<sup>th</sup> Meeting of AU Trade Ministers noted 'that there were divergent views on this matter and has directed the Senior Trade Officials (STO) to authorise the Negotiating Forum (NF) to find a practical solution that does not impact on the adopted Modalities.'<sup>16</sup> If there remains difficulties with the 3 options, other solutions beyond these three options could be explored. Alternatives could include:

- Interpretation of the conditions under which a customs union could be considered an LDC under the AfCFTA tariff negotiation modalities
- Allow a longer implementation period for some not all tariff lines for countries in the customs union, for tariff lines of particular interest to LDCs
- Allow for certain carve-outs that apply to LDCs within the customs union
- Allowing reciprocity in timeframes for implementation between negotiating partners

• *Interpretation of the conditions under which a customs union could be considered an LDC under the AfCFTA tariff negotiation modalities.* In this scenario, the customs un-

ion would either be considered an LDC or non-LDC based on an objective and verifiable indicator.

The most straightforward indicator would be the number of LDCs in a customs union. In a customs union where LDCs are in the majority, the entire customs union could be considered an LDC. In 2011, AU Trade Ministers introduced the concept of an LDC customs union in a proposal for a Common and Enhanced Trade Preference System, which suggested that OECD countries should extend LDC preferences to LDC customs unions.<sup>17</sup>

Within the WTO, there is a precedence for providing preferential treatment to all countries within a regional trade agreement (which includes customs unions) where the majority of members are LDCs. In the 2003 General Council Decision on the Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health, a pharmaceutical product produced or imported under a compulsory licence can be exported to all countries within an RTA where at least half of the current membership is made up of LDCs (and not only to the country to which the compulsory license applies).<sup>18</sup>

Another indicator could be the share of the extra-customs union imports by LDCs in total extra-customs unions imports (from African countries).

Let's first look at ECOWAS. Based on import figures for the years 2015-2017, ECOWAS countries imported USD 9.4 billion from other African countries, of which USD 6.2 billion was on account of regional trade (in other words, for ECOWAS, 2/3 of intra-African trade was trade within the customs union). This means that extra-ECOWAS imports from African countries amounted to USD 3.1bln. The 4 non-LDCs were responsible for USD 2bln, which left USD 1.1 bln for the LDCs in ECOWAS. Based on this data, the majority (64%) of extra-ECOWAS imports from Africa was done by non-LDCs. (See Table 9.)

This applies for Africa in general, but also for ECOWAS imports from specific negotiating partners. For instance, only 13% of total ECOWAS imports from the EAC was by the LDCs in ECOWAS and almost half (46%) in the case for imports from Morocco. (See Table 10.)

How does the situation look like for the EAC? In the

**Table 9 – Share of ECOWAS LDCs' extra-ECOWAS imports from Africa**

ECOWAS Import from	ECOWAS total	ECOWAS non LDCs	ECOWAS LDCs	Share LDCs
<b>Africa (including ECOWAS)</b>	9,364,853	4,299,928	5,064,925	54%
<b>ECOWAS</b>	6,240,208	2,300,215	3,939,993	63%
<b>Africa excluding ECOWAS (Extra-ECOWAS import)</b>	3,124,645	1,999,713	1,124,933	<b>36%</b>

Note: ECOWAS non-LDCs are Cape Verde, Cote d'Ivoire, Ghana and Nigeria

Source: calculations based on import data from ITC TradeMap, average 2015-2017 (USD Thousands)

**Table 10 - Share of ECOWAS LDCs' extra-ECOWAS imports from selected African countries and customs unions**

ECOWAS Import from..	ECOWAS total	ECOWAS non LDCs	ECOWAS LDCs	Share LDCs
Morocco	708,216	383,550	324,666	46%
Egypt	240,954	171,261	69,693	29%
EAC	47,472	41,334	6,138	13%
SACU	1,393,176	963,937	429,239	31%

Source: calculations based on import data from ITC TradeMap, average 2015-2017 (USD Thousands)

**Table 11 - Share of EAC LDCs' extra-EAC imports from Africa**

EAC imports from	EAC total	EAC non LDC (Kenya)	EAC LDCs	Share LDCs
Africa	4,690,385	1,614,284	3,076,101	66%
EAC	2,309,484	442,041	1,867,442	81%
Extra-EAC imports	2,380,901	1,172,243	1,208,659	<b>51%</b>

Source: calculations based on import data from ITC TradeMap, average 2015-2017 (USD Thousands)

case of the EAC, the share of LDC imports from African countries in total imports from African countries (excluding EAC trade) was 51%. (See Table 11.)

- *Allow a longer implementation period for some but not all tariff lines for countries in the customs union, for tariff lines of particular interest to LDCs.* A midway solution between either the short non-LDC vs the longer LDC implementation period for all tariff lines is to allow the longer LDC implementation periods for some tariff lines. These tariff lines should be of particular interest to LDCs in the customs union. The challenge is how to objectively identify which tariff lines are 'of particular interest to LDCs' as well as achieving agreement on the number of tariff lines and/or trade involved for which the longer implementation period would apply.

- *Allow for certain carve-outs that apply to LDCs within the customs union.* LDCs could agree to a shorter transition period (i.e. 5 years for Non-Sensitive Products) provided that they receive something in return. For instance, several LDCs within ECOWAS maintain charges equivalent to import tariffs on oil imports, which should be eliminated pursuant to the AfCFTA Agreement. However, agreement could be reached for them to maintain such charges.

- *Allowing reciprocity in timeframes for implementation between negotiating partners.* For instance if ECOWAS offers a 10 year implementation period for Non-Sensitive Products, negotiating partners (e.g. SACU or Egypt) could offer the same to ECOWAS (10 years instead of 5). This option might lead to implementation issues if the other negotiation partner would continue to apply a 5 year implementation period for imports from other African origins. At the same time, it could be argued that some negotiating partners have gained some experience in the application of other preferential trade agreements, within and outside the continent.

### 5.3 The process of negotiations

At present, there are some aspects relating to the pro-

cess of negotiations that would need to be considered:

- To whom initial offers are made. Offers could be made with respect to

- ◆ All African countries (other than the countries belonging to the customs union, if the offer is made by a customs union)

- ◆ All African countries that have ratified the AfCFTA

- ◆ All African countries with whom there is no existing preferential agreement

- ◆ Differentiated offers by customs unions / regions or countries, depending on the sensitivities involved. For instance, sugar from a country with competitive producers might be sensitive and could be excluded from liberalization. Nonetheless, sugar could be liberalized for countries with less competitive producers, or having no or limited sugar production.

- The extent to which offers should be made public and/or timing of offers. For instance, in bilateral negotiations, the initial offers might be exchanged at (around) the same time.

- Whether tariff preferences agreed in bilateral negotiations after tabling the initial offer should be offered to all within the AfCFTA? For instance, if Kenya (EAC) requests South Africa (SACU) to move a product from the exclusion list to the non-sensitive or sensitive list (i.e. tariff will be eliminated for that product) and South Africa (SACU) would agree, could other African countries enjoy such preference? The MFN clause contained in Article 18 of the Agreement establishing the AfCFTA (see Section 4 above) suggests that this is not the case. This implies that the final tariff offer will apply between SACU and EAC, not between SACU and all other African countries, or between EAC and all other African countries.

- How to measure the compliance with the modalities.

The requirement is that the exclusion list (3% of tariff lines) does not represent more than 10% of total African imports. Would this be 10% of African imports in a given permutation (e.g. SACU imports from EAC in an offer by SACU to EAC, or EAC imports from non-Tripartite FTA countries in an offer by EAC to non-Tripartite FTA countries) or 10% of total African imports (i.e. the cumulative value of imports under all the agreed exclusion lists).

The second interpretation poses several challenges: First, assessing compliance would only be possible after all African countries ratified the AfCFTA and tariff schedules with all African countries have been concluded. Second, if countries or customs unions do not provide offers to all African countries, for instance, they only provide offers to countries with whom they do not have an existing FTA, there is no liberalization under AfCFTA for the other African countries. In other words, technically 100% of imports from countries under FTAs is excluded from these countries under the AfCFTA.

Therefore, it appears that compliance with the modalities would be measured on the basis of imports from the countries to whom the offers are made.

#### 5.4 A Non-Sensitive offer for imports from all African countries?

For African countries that have concluded a limited number of preferential agreements, it appears to be burdensome to negotiate and implement more than 20 different tariff schedules. It would imply very time-consuming and lengthy negotiations and result in tariff concessions that might be difficult to administer by customs authorities. Importers could abuse such differentiation by declaring an African country of origin that has the best tariff treatment.

One method that would lead to uniform tariff offers, while providing flexibility for tailoring tariff offers vis-à-vis a negotiating partner could be to break the negotiations into two steps:

As a first step, each customs union and country would submit an initial offer for Non-Sensitive Products (90% of tariff lines) that would apply to imports from all African countries. This implies that for 90% of products the tariff treatment will be the same, regardless of where a product originates in Africa.

Such offer should be automatically accepted by other countries. There is no negotiation needed on the tariff lines proposed to be Non-Sensitive.

On the yet unresolved issue of timelines for implementation for LDCs in customs unions, there could be an element of reciprocity between customs unions. For instance, if ECOWAS offers a 10 year transition period for Non-Sensitive Products, SACU could either stick with its proposed transition period for imports from all African countries (e.g. 5 years) or choose to apply a different transition period for imports from ECOWAS

(e.g. also 10 years). Allowing for reciprocity would result in differentiated offers: in this example the SACU-ECOWAS offer would differ from the SACU-non ECOWAS offer (but only in respect of transition periods).

Technical verification by the AU Secretariat would be needed to ensure *inter alia* that the offers accurately represent the MFN tariffs as of date of entry into force of the AfCFTA for all tariff lines. The offers would be collected by the AU Secretariat which would make them public to AU Member states once (substantially) all offers are received. There would be no check on import values for compliance purposes, as this only applies to the exclusion list. Nonetheless the amount of import value covered by these 90% offers could be calculated for transparency purposes.

Various indicators could be used to guide the selection of tariff lines for Non-Sensitive Products. A selection based on tariffs only for instance could look at low MFN or preferential tariffs including

- MFN duty free / 0%
- MFN tariff is 5% or lower, or 10% in the case of agricultural products<sup>19</sup>
- Most recently available preferential tariff with any third party that is 0%
- Most recently available preferential tariff with any third party that is 5% or lower
- Duty-free tariff lines under an African FTA (should not include the customs unions).

If import data is available, there are various other indicators that could be calculated, such as

- Statutory<sup>20</sup> tariff revenue loss: identify tariff lines where tariff multiplied by imports from African countries to which the offer is made is low
- Share of intra-African imports: identify tariff lines where share of imports from African countries is lower than a certain value or the average for the country
- Revealed Comparative Advantage (RCA): identify tariff lines where the RCA with respect to the African market is > 1.

These are some illustrative examples, but other selection criteria should be used as well to identify tariff lines (not) to be placed in the Non-Sensitive product category, such as pre-existing sensitive lists, food security concerns, producer concerns etc.

As a second step, there would be bilateral negotiations, in principle on the remaining 10% of tariff lines. In other words, we would have a request/offer process in which tariff lines could be moved between the sensitive list (slated for liberalization) and the exclusion list. Removals from the exclusion list that resulted from bilateral negotiations would in principle not be extended to other African countries.

This scenario assumes that the 10% of tariff lines is

enough to cater for all the sensitivities. This might not always be the case, for instance:

- ECOWAS classified apples in the non-sensitive product list and cars in the exclusion list
- SACU requests that cars are moved to the sensitive product category (i.e. liberalized)
- ECOWAS can agree on the condition that apples are moved to exclusion.

In the end, the reality is that there will be bargaining between different negotiating partners. So a step wise approach might have the potential to reduce the scope of bilateral negotiations, but it would not reduce the number of bilateral negotiations between African countries.

## 6. Conclusion

The African Continental Free Trade Area (AfCFTA), which entered into force on 30 May 2019, represents a unique collaborative effort by African countries to bolster regional and continental economic integration, in a world marked by increasing protectionism and use of unilateral trade measures.

For its operationalization, agreement would need to be reached particularly in the following areas: (1) Rules of origin; (2) Schedules of tariff concessions on trade in goods and (3) Annexes to the Protocol on Trade in Services, including the schedules of tariff concessions on trade in services. The focus of these 'Phase 1B' negotiations are tariff negotiations.

The expected economic impacts of tariff liberalization under the AfCFTA are positive in general but there are costs and distributional impacts involved with tariff elimination. There are various legal and practical issues relating to the implementation of these modalities, including the relationship between AfCFTA and African regional trade agreements, MFN treatment, making tariff concessions an integral part of the AfCFTA Agreement and rules of origin. With respect to tariff negotiations, various issues relating to the process need to be considered, including the scope of offers, whether results from bilateral negotiations should be available/offered to all and whether the negotiations could be broken down into 2 steps - starting with a Non-Sensitive list with 90%, with future negotiations on the remaining 10% of tariff lines.

### Endnotes:

<sup>1</sup> AU press release, 29 April 2019. Available from <https://au.int/en/pressreleases/20190429/afcfta-agreement-secures-minimum-threshold-22-ratification-sierra-leone-and>.

<sup>2</sup> Mesut Saygili, Ralf Peters, & Christian Knebel, "African Continental Free Trade Area: Challenges and Opportunities of Tariff Reductions", UNCTAD Research Paper No. 15 (February 2018).

<sup>3</sup> Simon Mevel & Stephen Karingi, "Deepening Regional Integration in Africa: A Computable General Equilibrium Assessment of the Establishment of the Continental Free Trade Area followed by a Continental Customs Union" (2012).

<sup>4</sup> Pinelopi K. Goldberg and Nina Pavcnik, "Trade, Inequality, and Poverty: What Do We Know? Evidence from Recent Trade Liberalization Episodes in Developing Countries", NBER Working Paper No. 10593 (June 2004).

<sup>5</sup> [https://en.wikiquote.org/wiki/John\\_Maynard\\_Keynes](https://en.wikiquote.org/wiki/John_Maynard_Keynes)

<sup>6</sup> TI/CFTA/AMOT/3/TIG/MOD/FINAL, Annex IV - 'Modalities for Continental Free Trade Area on Tariff Negotiations', version 21 September 2017.

<sup>7</sup> Djibouti, Ethiopia, Madagascar, Malawi, Sudan, Zambia, and Zimbabwe

<sup>8</sup> AU/TI/AfCFTA/NF/14/FINAL/REPORT, Final Report of the Fourteenth Meeting of the African Continental Free Trade Area Negotiating Forum (AfCFTA-NF).

<sup>9</sup> Even through the agreement(s) resulting from the AfCFTA tariff negotiations would comply with Article XXIV GATT, it would be advisable to notify the AfCFTA under the Enabling Clause. This issue is not dealt with as it falls outside the scope of this paper.

<sup>10</sup> The text of the Abuja Treaty can be retrieved at [https://www.wipo.int/edocs/lexdocs/treaties/en/aec/trt\\_aec.pdf](https://www.wipo.int/edocs/lexdocs/treaties/en/aec/trt_aec.pdf).

<sup>11</sup> Report of the meeting of African Union Ministers of Trade (24 May 2016), Annex III, 'Definitions for the Continental Free Trade Area (CFTA) Negotiations Guiding Principles'.

<sup>12</sup> If the MFN clause would apply, Egypt and Tunisia should already have 100% duty free for imports from all African countries.

<sup>13</sup> African Union, "Key Decisions of the 32nd Ordinary Session of the Assembly of the African Union", Press release, 12 February 2019. Available from

<https://au.int/en/pressreleases/20190212/key-decisions-32nd-ordinary-session-assembly-african-union-january-2019>.

<sup>14</sup> African Union, "Key Decisions of the 32nd Ordinary Session of the Assembly of the African Union", Press release, 12 February 2019. Available from

<https://au.int/en/pressreleases/20190212/key-decisions-32nd-ordinary-session-assembly-african-union-january-2019>.

<sup>15</sup> TI/CFTA/AMOT/3/TIG/MOD/FINAL, Annex IV - 'Modalities for Continental Free Trade Area on Tariff Negotiations', version 21 September 2017.

<sup>16</sup> Report of the Seventh Meeting of African Union Ministers of Trade, December 2018, AU document TI/AfCFTA/AMOT/7/FINAL/REPORT.

<sup>17</sup> Proposal For A Common And Enhanced Trade Preference System For Least Developed Countries (LDCs) And Low Income Countries (LICs), 7th Ordinary Session of AU Conference Of Ministers Of Trade, 29 November - 3 December, 2011, Accra, Ghana, AU document AU/MIN/TD/11 (VII). Available from [https://au.int/sites/default/files/newsevents/workingdocuments/26498-wd-ti6204\\_e\\_original\\_td11.doc](https://au.int/sites/default/files/newsevents/workingdocuments/26498-wd-ti6204_e_original_td11.doc)

<sup>18</sup> WTO document WT/L/540 and Corr.1. Available from [https://www.wto.org/english/tratop\\_e/trips\\_e/implem\\_para6\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm).

<sup>19</sup>According to WTO secretariat note RD/RO/78 dated 14 May 2019, preference utilization rates for agricultural products are below 50% when the preference margin is 10% or lower.

<sup>20</sup>In practice, not all the tariffs that are 'in the book' (statutory) are collected. Tariff exemptions may apply to certain imports, e.g. because of investment incentives and waivers.

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