

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	51%

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 products¹⁹
- 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

- Statutory²⁰ 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:

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

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

³ 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).

⁴ 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).

⁵ https://en.wikiquote.org/wiki/John_Maynard_Keynes

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

⁷ Djibouti, Ethiopia, Madagascar, Malawi, Sudan, Zambia, and Zimbabwe

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

⁹ 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.

¹⁰ The text of the Abuja Treaty can be retrieved at https://www.wipo.int/edocs/lexdocs/treaties/en/aec/trt_aec.pdf.

¹¹ 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'.

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

¹³ 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>.

¹⁴ 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>.

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

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

¹⁷ 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

¹⁸ WTO document WT/L/540 and Corr.1. Available from https://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm.

¹⁹According 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.

²⁰In 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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The South Centre
Chemin du Champ d'Anier 17
PO Box 228, 1211 Geneva 19
Switzerland
Telephone: (4122) 791 8050
Fax: (4122) 798 8531
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