

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
Average for all FTAs	25.3	12.1	18.7

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:

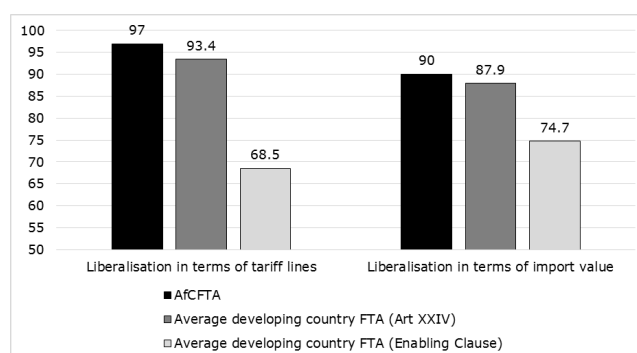
Article 19

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