

**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> |
|-------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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)