

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 7th 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.'¹⁶ 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.¹⁷

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).¹⁸

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
Africa (including ECOWAS)	9,364,853	4,299,928	5,064,925	54%
ECOWAS	6,240,208	2,300,215	3,939,993	63%
Africa excluding ECOWAS (Extra-ECOWAS import)	3,124,645	1,999,713	1,124,933	36%

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)