

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 Treaty¹⁰ 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 2016¹¹:

“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

表6 - 现有协议和非洲大陆自由贸易区下的适用关税

根据现有协议自由化的关税线 (缔约方间) ties	关税税目自由化- 根据非洲大陆自由贸易区实施	适用关税?
Yes	Yes	依据非洲大陆自由贸易区规定，过渡期按现有协议执行（否则非洲大陆自由贸易区将成为延迟实施的途径- 已达成关税减让的实施)
Yes	No	根据现有协议中缔约方之间的约定。对于其他非洲国家，适用最惠国关税。
No	No	最惠国关税
No	Yes	根据非洲大陆自由贸易区

最初会向现有优惠安排之外的国家提出要约。

4.2 最惠国待遇

《非洲经济共同体条约》（又称《阿布贾条约》）¹⁰ 第37条规定

- i) 给予某一非洲国家的最佳待遇应同等给予所有非洲国家
- ii) 若非洲国家向非非洲国家提供关税优惠，则该优惠必须同样给予所有非洲国家：

第37条 - 最惠国待遇
1. 成员国应在共同体内部贸易中相互给予最惠国待遇。在任何情况下，成员国根据与第三国签订的协议所给予的关税减让，均不得优于根据本条约适用的关税减让。
2. 本条第1款所述协议的文本应由相关成员国缔约方通过秘书长转发给所有其他成员国，以供其

信息。
3. 成员国与第三国之间达成的任何授予关税减让的协定，均不得违背本条约规定的义务。

这一法律承诺也被纳入非洲大陆自由贸易区谈判在最惠国待遇下的原则之一， 由部长们在2016¹¹中达成一致：

“成员国应在共同体内部贸易中相互给予最惠国待遇。任何给予第三方的更优惠贸易让步也应授予其他成员国。”

严格实施这一规则对许多国家而言存在困难。例如，突尼斯和埃及已对来自第三方/非非洲国家约旦的所有进口商品实行自由化（见表7）。这意味着根据《阿布贾条约》第37.1条，埃及和突尼斯必须给予所有非洲国家进口商品免税准入，且不要求这些国家提供互惠待遇。

在此背景下，《非洲大陆自由贸易区协定》包含了一篇题为‘大陆优惠’的条款，实质上削弱了《阿布贾条约》第37.1条所载的法律承诺：

表7 - 阿加迪尔协定3个非洲成员国仍适用关税的税目及进口份额

国家	伙伴国（进口来源国 originate)	仍有关税税目的比例 仍有关税税目的比例 (%)	进口份额 (价值) 仍需征税 (%)
突尼斯	埃及	0	0
突尼斯	约旦	0	0
突尼斯	摩洛哥	0	0
摩洛哥	突尼斯	8.7	2.7
摩洛哥	约旦	8.7	2.2
摩洛哥	埃及	8.7	2.4
埃及	约旦	0	0
埃及	摩洛哥	0	0
埃及	突尼斯	0	0