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 Treaty[10] 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 2016[11]:

"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 - 现有协议与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协定实施	适用关税?
Yes	Yes	依据非洲大陆自由贸易区协定，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	根据现有协议的规定适用于缔约方之间的现有协议。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，则该优惠必须同等给予所有非洲国家：

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达成的协议所给予的关税减让，均不得优于本条约规定的关税减让。

2. 本条第1款所述协议文本应由作为其缔约方的成员国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协议，若涉及关税减让，均不得与本条约规定的义务相抵触。与此产生的义务不相容条约。

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2016[11]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议包含了一篇题为'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 - 加入阿加迪尔协定的3个非洲国家仍适用关税的关税税目和进口份额

国家	伙伴国（进口来源国）	仍有关税税目的比例(%)	进口商品占比(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

Article 18 of AfCFTA Agreement - Continental Preferences

1. Following the entry into force of this Agreement, State Parties shall, when implementing this Agreement, accord each other, on a reciprocal basis, preferences that are no less favourable than those given to Third Parties.

2. A State Party shall afford opportunity to other State Parties to negotiate preferences granted to Third Parties prior to entry into force of this Agreement and such preferences shall be on a reciprocal basis. In the case where a State Party is interested in the preferences in this paragraph, the State Party shall afford opportunity to other State Parties to negotiate on a reciprocal basis, taking into account levels of development of State Parties.

3. This Agreement shall not nullify, modify or revoke rights and obligations under pre-existing trade agreements that State Parties have with Third Parties.

The implications of Article 18 appear to be the following:

• No obligation to accord the most favourable treatment given to one African country to other African countries. Article 18 applies to preferences extended to third parties.

• The MFN clause only applies to future trade agreements between African and non-African countries. This means for instance that the MFN commitment does not apply to the Agadir Agreement.[12] However, it would apply to countries that are party to an Economic Partnership Agreement (EPA) with the European Union (EU) that will enter into force after the AfCFTA enters into force.

• The extension of preferences is not automatic but subject to reciprocity. This means that another African country can only claim a preference if it gives something in exchange. In a way this inhibits other African countries to benefit from preferences given by an African country to a non-African country. In this context, the 32nd Ordinary Summit of January 2019 "decided that Member States wishing to enter into partnerships with third parties should inform the Assembly with assurance that those efforts will not undermine the African Union vision of creating one African market".[13]

In conclusion, in the area of AfCFTA tariff negotiations where parties liberalize on a reciprocal basis, Article 18 could be of some use for some African countries negotiating with other African countries that have (future) agreements with non-African countries, as it gives the former more leverage in demanding the liberalization of certain tariff lines.

4.3 Making schedules of concessions an integral part of the AfCFTA

Article 7 of the AfCFTA, 'Schedules of Tariff Concessions' stipulates that "each State Party shall apply preferential tariffs to imports from other State Parties in accordance with its Schedule of Tariff Concessions contained in Annex 1 to this Protocol and in conformity with the adopted tariff modalities."

Pursuant to Annex 1 (paragraph 2), "the Schedules of Tariff Concessions shall, once adopted by the Assembly, be appended to this Annex and shall apply to trade among State Parties upon the entry into force of the Agreement in accordance with Article 23 of the Agreement."

The current text implies that tariff concessions would be effective immediately upon adoption by the Assembly once the Agreement establishing the AfCFTA enters into force. In other words, agreed tariff concessions do not to need to undergo a new ratification procedure for them to have legal effect. While this appears expedient, in reality the parliaments in several African countries would probably want to scrutinize agreed tariff concessions, as this is considered the 'meat' of the agreement, as far as it concerns trade in goods.

Furthermore, the current text appears to imply that the adoption of the Schedules of Tariff Concessions is a one-time event. In reality, it would be a challenge to gather all tariff concessions in a big package for adoption by the Assembly, and it would be more probable that the results may take place in steps.

4.4 Rules of Origin

With respect to rules of origin, the outstanding issues, i.e. the issues on which negotiations are yet to be concluded, are listed in Article 42.1 ('Transitional Arrangements') of Annex 2 on Rules of Origin. This includes the substantive rules of origin, as well as various other issues such as treatment of products from Special Economic Zones. Rules of origin will be used to determine the applicability of preferential tariff treatment under the AfCFTA and are also important for the application of trade remedies. The Rules of Origin procedures have been agreed, such as the documentation that need to be submitted to prove origin.

In the absence of agreed substantive rules of origin under the AfCFTA, Article 42.3 stipulates that "Pending the adoption of the outstanding provisions, State Parties agree that the Rules of Origin in existing trade regimes shall be applicable."

This provision appears to safeguard the status quo. At present, a country or customs union might apply different rules of origin depending on the declarations by the importer:

• Non-preferential rules of origin (for MFN imports)

• Rules of origin under regional or bilateral African trade agreements such as the Southern African Development Community (SADC), COMESA, EAC, ECOWAS, or the Morocco-Tunisia FTA.

• Rules of origin under FTAs with non-African countries, such as the Eastern and Southern Africa (ESA)-EU EPA.

非洲大陆自由贸易区协议第18条 - 大陆优惠

1. 本协议生效后，成员国在实施本协议时，应在互惠基础上相互给予不低于给予第三方的优惠待遇。

2. 成员国应给予其他成员国机会，就本协议生效前授予第三方的优惠进行谈判，且此类优惠应以互惠为基础。若某成员国对本款所述优惠感兴趣，该成员国应给予其他成员国在互惠基础上进行谈判的机会，同时考虑成员国的发展水平。

3. 本协议不得废除、修改或撤销成员国与第三方之间现有贸易协定下的权利和义务。

第18条的影响似乎如下：

• 无义务将给予某一非洲国家的最优惠待遇延伸至其他非洲国家。第18条适用于给予第三方的优惠待遇。

• 最惠国条款仅适用于非洲国家与非非洲国家之间未来达成的贸易协议。这意味着，例如，最惠国承诺不适用于《阿加迪尔协定》。[12] 然而，它将适用于与欧洲联盟（欧盟）签订经济伙伴协定（EPA）并在非洲大陆自由贸易区生效后生效的国家。

• 优惠的扩展并非自动适用，而是以互惠为条件。这意味着另一个非洲国家只有在提供某种交换条件时才能主张优惠。这在某种程度上抑制了其他非洲国家从非洲国家给予非非洲国家的优惠中受益。在此背景下，2019年1月第32届常规峰会"决定希望与第三方建立伙伴关系的成员国应通知大会，并确保这些努力不会破坏非洲联盟建立一个非洲市场的愿景"。[13]

总之，在非洲大陆自由贸易区关税谈判领域，缔约方在互惠基础上进行自由化时，第18条可能对一些非洲国家与其他非洲国家（未来）与非非洲国家达成协议的谈判中有所帮助，因为它为前者在要求某些关税项目的自由化方面提供了更多的杠杆。

4.3 将减让表作为非洲大陆自由贸易区的组成部分

非洲大陆自由贸易区第7条"关税减让表"规定，"各成员国应适用优-根据本议定书附件1所含关税减让表及所采用的关税模式，对其他成员国进口产品实施优惠关税。"

根据附件1（第2段），"关税减让表一经大会通过，即应附于本附件，并自协议根据第23条生效之日起在成员国之间的贸易中适用。"

当前文本暗示，一旦建立非洲大陆自由贸易区的协议生效，关税减让将在大会通过后立即生效。换言之，已达成一致的关税减让无需经过新的批准程序即可产生法律效力。虽然这看似便利，但实际上多个非洲国家的议会可能希望对已商定的关税减让进行审查，因为这被视为协议中关于货物贸易的'核心内容'。

此外，当前文本似乎暗示关税减让表的通过是一次性事件。实际上，将所有关税减让汇总为一个大型方案供大会通过将面临挑战，更可能的结果是分阶段实施。

4.4 原产地规则

关于原产地规则，未决问题（即尚未完成谈判的问题）列于《原产地规则》附件2第42.1条（"过渡安排"）中。这包括实质性原产地规则，以及诸如经济特区产品待遇等其他各类问题。原产地规则将用于确定非洲大陆自由贸易区下优惠关税待遇的适用性，并对贸易救济的实施至关重要。原产地规则程序已达成一致，例如需要提交以证明原产地的文件。

在非洲大陆自由贸易区缺乏已商定的实质性原产地规则的情况下，第42.3条规定："在未决条款通过前，成员国同意适用现有贸易制度中的原产地规则。"

该条款似乎旨在维持现状。目前，一个国家或关税同盟可能会根据进口商的申报适用不同的原产地规则：

• 非优惠原产地规则（适用于最惠国进口 rts)

• 非洲区域或双边贸易协定（如南部非洲发展共同体（SADC）、东南非共同市场（COMESA）、东非共同体（EAC）、西非国家经济共同体（ECOWAS）或摩洛哥-突尼斯自由贸易协定（Morocco-Tunisia FTA））下的原产地规则。

• 与非非洲国家签订的自由贸易协定中的原产地规则，例如东部和南部非洲-欧盟经济伙伴协定。

At present, the AfCFTA has agreed rules of origin procedures. Once the AfCFTA enters into force, this implies that countries that have ratified the AfCFTA are legally required to make available the following documents for usage by traders: AfCFTA Certificate of Origin (Appendix I), AfCFTA Origin Declaration (Appendix II) and AfCFTA Supplier or Producer's Declaration (Appendix III).

AfCFTA Certificates of Origin shall be issued by a Designated Competent Authority of the exporting State Party on application having been made in writing by the Exporter or, under the Exporter's responsibility, by his authorised representative (Article 19.1 of Annex 2 on Rules of Origin). The AfCFTA Origin Declaration (Appendix II) can be used by 'approved exporters' (as per Article 20) as well as 'any Exporter for any Consignment consisting of one or more packages containing originating Products whose total value does not exceed five thousand US dollars (USD5,000)'. The Origin Declaration is considered a trade-facilitative instrument compared with a Certificate of Origin as it involves lower resource requirements for exporters.

The agreed rules of origin procedures in conjunction with the Transitional Arrangements (in particular Article 42.3, 'Pending the adoption of the outstanding provisions, State Parties agree that the Rules of Origin in existing trade regimes shall be applicable') raise some questions such as:

- For consignments of up to USD 5,000, could exporters from African countries dispense with providing a Certificate of Origin to customs authorities (if that was previously required) and instead fill in the Origin Declaration?
- Could a trader claim applicability of rules of origin contained in an existing FTA that are better than the non-preferential rules of origin? E.g could an importer in Egypt claim applicability of the COMESA rules of origin to products coming from South Africa (not part of COMESA), since COMESA is an 'existing trade regime' of Egypt?

After conclusion of negotiations on the substantive rules of origin, they would be added to Appendix IV ('AfCFTA Rules of Origin') of Annex 2 on Rules of Origin to the Agreement establishing the AfCFTA. How and when would these rules of origin be made legally effective? According to general rules in Articles 28 and 29, the Agreement establishing the AfCFTA is subject to quinquennial reviews which would result in recommendations for amendments, to be adopted by consensus by State Parties. Adopted amendments will enter into force after ratifications by at least 22 State Parties (Article 23 of the Agreement establishing the AfCFTA).

With respect to outstanding issues on rules of origin, State Parties opted for a faster approach, instead of waiting for the next 5 year interval in 2024. Article 42.2 states that "the outstanding provisions referred to in paragraph 1 of this Article shall, upon adoption by the Assembly, form an integral part of this Annex." Yet, this specific rule is silent on when the result of negotiations on the substantive rules of origin and other outstanding issues would enter into force, i.e. when it would be legally binding on the State Parties. This seems to the imply that ratification of the results on the outstanding issues on rules of origin is not needed, as ratification of the initial text covers also whatever is the negotiated outcome in this area.

5. Tariff negotiations

The January 2019 AU Summit requested the African Union Ministers responsible for trade to submit the Schedules of Tariff Concessions in line with agreed modalities to the July 2019 summit.[14]

While the end point is clear there are some remaining questions before the achievement of the final objectives. Implementation of the modalities could involve many bilateral tariff negotiations, implying that it could take more time to finalize the tariff schedules.

5.1 Negotiating partners – who will make and receive offers?

The tariff modalities state the following about the negotiating parties: [15]

"10. Member States participating in RECs that are not Customs Unions at the regional level shall negotiate tariff liberalisation with other Member States as individual States.

11. Member States that belong to a Customs Union shall negotiate collectively."

The operational customs unions on the African continent include the Economic Community of West African States (ECOWAS), the East African Community (EAC) and the Southern African Customs Union (SACU). The Economic Community of Central African States (ECCAS-CEEAC), one of the eight Regional Economic Communities (RECs) designated by the African Union as pillars for the implementation of the African Economic Community is in the process of establishing a common external tariff, which is a prerequisite for tabling a common offer. The Economic and Monetary Community of Central Africa (CEMAC), a subset of six countries within ECCAS, has not yet pronounced itself whether its member States will negotiate collectively or as individual member states. All the other countries would have to negotiate individually.

If this is to be executed to the letter, the number of negotiations will be enormous. In a scenario where ECOWAS, EAC and SACU negotiate collectively and all the other countries (29) negotiate individually, the implementation of the modalities would involve 496 tariff negotiations. If CEMAC as a 6-country grouping would negotiate collectively the number would drop to 351 tariff negotiations, which is still a very high number (see Tables 8.1 and 8.2).

In reality, there would be a lower number of tariff negotiations because of the following:

目前，非洲大陆自由贸易区已就原产地规则程序达成一致。一旦非洲大陆自由贸易区生效，这意味着已批准该协定的国家在法律上有义务为贸易商提供以下文件：非洲大陆自由贸易区原产地证书（附录I）、非洲大陆自由贸易区原产地声明（附录II）以及非洲大陆自由贸易区供应商或生产商声明（附录III）。

非洲大陆自由贸易区原产地证书应由出口成员国的指定主管机构根据出口商或其授权代表（在原产地规则附件2第19.1条下）以书面形式提出的申请签发。非洲大陆自由贸易区原产地声明（附录II）可由'经批准的出口商'（根据第20条）以及'任何出口商用于总价值不超过五千美元（USD5,000）的一批或多批原产产品'使用。与原产地证书相比，原产地声明被认为是一种贸易便利化工具，因为它对出口商的资源要求较低。

商定的原产地规则程序与过渡安排（特别是第42.3条，'在未决条款通过之前，成员国同意现有贸易制度中的原产地规则应适用'）相结合，引发了一些问题，例如：

- 对于价值不超过5000美元的货物，非洲国家的出口商是否可以免于向海关当局提供原产地证书（如果此前有此要求），而改为填写原产地声明？
- 贸易商是否可以主张适用现有自由贸易协定中包含的、优于非优惠原产地规则的原产地规则？例如，埃及的进口商是否可以主张对来自南非（非东南非共同市场成员）的产品适用东南非共同市场的原产地规则，因为东南非共同市场是埃及的'现有贸易体制'？

在原产地实体规则谈判结束后，这些规则将被添加到《建立非洲大陆自由贸易区协议》关于原产地规则的附件2之附录四（'非洲大陆自由贸易区原产地规则'）中。这些原产地规则将如何及何时具备法律效力？根据第28条和第29条的一般规则，《建立非洲大陆自由贸易区协议》需接受五年期审查，审查将产生修正案建议，并由成员国协商一致通过。通过的修正案需经至少22个成员国批准后方可生效（《建立非洲大陆自由贸易区协议》第23条）。

关于原产地规则中的未决问题，成员国选择了一种更快的解决方式，而非等待2024年的下一个五年周期。第42.2条规定，"上述未决条款所提及的本条第一款一经大会通过，即构成本附件不可分割的一部分。"然而，该具体规则未明确关于原产地规则实体条款及其他未决问题的谈判结果何时生效，即何时对成员国产生法律约束力。这似乎暗示着无需对原产地规则未决问题的谈判结果另行批准，因为初始文本的批准已涵盖该领域所有谈判达成的结果。

5. 关税谈判

2019年1月非盟峰会要求非洲联盟负责贸易的部长们根据商定的模式，向2019年7月峰会提交关税减让时间表。[14]

尽管终点明确，但在实现最终目标之前仍存在一些未解决的问题。模式的实施可能涉及许多双边关税谈判，这意味着完成关税时间表可能需要更多时间。

5.1 谈判伙伴——谁将提出和接受要约？

关税模式对谈判缔约方作出如下规定：[15]

"*10.* 参与非关税同盟区域经济共同体的成员国应作为独立国家与其他成员国进行关税自由化谈判。

11. 属于关税同盟的成员国应集体进行谈判。

非洲大陆现行的关税同盟包括西非国家经济共同体（ECOWAS）、东非共同体（EAC）和南部非洲关税同盟（SACU）。中部非洲国家经济共同体（ECCAS-CEEAC）作为非洲联盟指定的八大区域经济共同体（RECs）之一，是实施非洲经济共同体的支柱，目前正在建立共同对外关税，这是提交共同出价的先决条件。中部非洲经济与货币共同体（CEMAC）作为ECCAS内六国的子集团，尚未明确其成员国将集体还是以单个成员国身份进行谈判。其余所有国家均需单独谈判。

若严格执行此项规定，谈判数量将极为庞大。假设ECOWAS、EAC和SACU集体谈判，其余29国单独谈判，则模式实施将涉及496项关税谈判。若CEMAC作为6国集团集体谈判，该数字将降至351项关税谈判——仍处于极高水平（参见表8.1和8.2）。

实际上，由于以下原因，关税谈判的数量会减少：