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 union would either be considered an LDC or non-LDC based on an objective and verifiable indicator.

The most straightforward indicator would be <u>the number of LDCs in a customs union</u>. 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 <u>the share of the extra-customs union imports by LDCs in total extra-customs unions imports</u> (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)

关税同盟成员国的所有国家将在5到10年内实现这一目标。

南部非洲关税同盟成员国倾向于选择选项A，而其他国家则提出了类似选项B或C的建议。东非共同体（除肯尼亚外全由最不发达国家组成）似乎更倾向于选项B。选项B还意味着非最不发达国家将从更长的实施期中受益。在谈判中，有人认为这违背了模式，并坚称只有选项A完全符合模式——模式规定了最低要求，并允许成员国采取更多措施。有建议指出，受影响的关税同盟应为最不发达国家建立或加强内部补偿机制。

事实是，选项A可能对关税同盟内的多个最不发达国家来说难以接受。7th 非洲联盟贸易部长会议指出‘各方对此问题存在分歧，并已指示高级贸易官员（STO）授权谈判论坛（NF）寻找不影响已通过模式的切实可行解决方案。’[16] 如果这三个选项仍存在困难，可以探索其他超越这三个选项的解决方案。替代方案可能包括：

- 解读关税同盟在非洲大陆自由贸易区关税谈判模式下可被视为最不发达国家的条件
- 对关税同盟国家中部分（非全部）最不发达国家特别关注的关税税目，允许更长的实施期
- 允许适用于关税同盟内最不发达国家的某些例外条款
- 在谈判伙伴之间实施时间框架上允许互惠

- 解读关税同盟在非洲大陆自由贸易区关税谈判模式下可被视为最不发达国家的条件。在此情景下，关税同-

根据客观且可验证的指标，该国家将被归类为最不发达国家或非最不发达国家。

最直接的指标是关税同盟中最不发达国家的数量。在最不发达国家占多数的关税同盟中，整个关税同盟可被视为最不发达国家。2011年，非洲联盟贸易部长在《共同强化贸易优惠体系》提案中首次提出最不发达国家关税同盟概念，建议经合组织国家将最不发达国家优惠待遇延伸至最不发达国家关税同盟。[17]

世界贸易组织内部已有先例，对成员多数为最不发达国家的区域贸易协定（含关税同盟）内所有国家给予优惠待遇。2003年总理事会关于《多哈宣言第6段执行及与贸易有关的知识产权协定与公共卫生》的决定中规定，根据强制许可生产或进口的药品可出口至当前成员半数以上为最不发达国家的区域贸易协定内所有国家（而不仅限于强制许可适用的国家）。[18]

另一个指标可能是最不发达国家在关税同盟外进口总额（来自非洲国家）中所占的关税同盟外进口份额。

让我们先看看西非国家经济共同体。根据2015-2017年的进口数据，西非国家经济共同体国家从其他非洲国家进口了94亿美元，其中62亿美元是区域贸易（换句话说，对西非国家经济共同体而言，非洲内部贸易的三分之二是关税同盟内的贸易）。这意味着来自非洲国家的西非国家经济共同体外进口额为31亿美元。4个非最不发达国家贡献了20亿美元，剩下11亿美元由西非国家经济共同体内的最不发达国家承担。基于这些数据，西非国家经济共同体外从非洲进口的大部分（64%）由非最不发达国家完成。（参见表9。）

这不仅适用于整个非洲，也适用于西非国家经济共同体从特定谈判伙伴的进口。例如，西非国家经济共同体从东非共同体进口的总量中，仅有13%由西非国家经济共同体内的最不发达国家完成；而从摩洛哥进口的案例中，这一比例接近半数（46%）。（参见表10。）

东非共同体的现状如何？在

表9 – 非洲ECOWAS最不发达国家从非洲以外的ECOWAS国家进口份额

西非国家经济共同体进口 from	西非国家经济共同体总计	西非国家经济共同体非最不发达国家	西非国家经济共同体最不发达国家	最不发达国家份额
非洲（包括 西非国家经济共同体）	9,364,853	4,299,928	5,064,925	54%
西非国家经济共同体	6,240,208	2,300,215	3,939,993	63%
非洲 excluding 西非国家经济共同体（ECOWAS以外-西非国家经济共同体进口）	3,124,645	1,999,713	1,124,933	**36%**

注：西非国家经济共同体非最不发达国家包括佛得角、科特迪瓦、加纳和尼日利亚数据来源：根据国际贸易中心贸易地图的进口数据计算，2015-2017年平均（千美元）