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UNITED NATIONS
Geneva, 2020

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United Nations publication issued by the United Nations Conference on Trade and Development.

UNCTAD/DITC/TNCD/2019/4

eISBN: 978-92-1-004870-5

ACKNOWLEDGEMENTS

The report was prepared by Taisuke Ito, Trade Negotiations and Commercial Diplomacy Branch, Division on International Trade and Commodities.

The study was originally prepared at the request of the African Union Commission as part of UNCTAD's technical support on AfCFTA negotiations to assist African Union member States in their conceptualization and elaboration of possible modalities for AfCFTA tariff negotiations. An earlier version of the paper, entitled as "Elements of the modalities for the African Continental Free Trade Area market access negotiations on tariffs: Some key issues for consideration", was circulated at an UNCTAD's High-level Round Table at the tenth World Trade Organization (WTO) Ministerial Conference in Nairobi, Kenya ("CFTA: Making it work for Africa: A joint event with the Government of Kenya, Commonwealth Secretariat, and African Union Commission" (16 December 2015).[1]

This earlier version was presented at a Capacity Building Workshop held at the occasion of the inaugural formal session of the AfCFTA Negotiating Forum (23 February 2016, Addis Ababa, Ethiopia); ECOWAS–UNCTAD–GIZ Stakeholder Consultation to develop a regional strategy for the AfCFTA Negotiations (9–11 March 2016, Accra, Ghana); the 3rd meeting of the CFTA Negotiating Forum (3–7 October 2016, Addis Ababa, Ethiopia), the African Trade Week 2016 (28 and 30 November 2016, Addis Ababa, Ethiopia) and the Orientation Workshop and the 5th meeting of CFTA Negotiating Forum (27 February–1 March 2017, Addis Ababa, Ethiopia).

The preparation of the report also benefited from discussions in the following meetings: ECA-AUC Expert Meetings on Drafting AfCFTA Agreements (2–5 May and 20–22 July 2016, Nairobi, Kenya); the 7th session of the Continental Task Force (9–11 January 2017, Nairobi, Kenya); the 7th meeting of the AfCFTA Negotiating Forum (2–7 October 2017, Addis Ababa, Ethiopia); the 8th meeting of the AfCFTA Negotiating Forum (20–23 November 2017, Abuja, Nigeria); the 9th meeting of the AfCFTA Negotiating Forum (5–9 February 2018, Addis Ababa, Ethiopia); Dedicated session with legal experts of the AfCFTA Negotiating Forum (Addis Ababa, Ethiopia, 9–10 May 2018); the 11th meeting of the AfCFTA Negotiating Forum (Dakar, Senegal, 27–28 May 2018); African Union Consultative Workshop on Market Access Concessions on Trade in Goods for CEN-SAD, ECCAS, ECOWAS and UMA (Abuja, Nigeria, 11–12 July 2018); and the 14th meeting of the AfCFTA Negotiating Forum (Cairo, Egypt, 5–8 December 2018).

Comments received from the following UNCTAD colleagues on the earlier draft are gratefully acknowledged: Liping Zhang, Edward Chisanga, Martine Julsaint-Kidane, Mesut Saygili, Christian Knebel, Samuel Munyaneza, Mussie Delelegn, Graham Mott, Mina Mashayekhi, Bonapas Onguglo, Lucas Assunçao, Joy Kategekwa and Sophia Twarog.

The cover and graphics were designed by Laura Moresino-Borini and the desktop publishing was performed by Belén Camarasa.

CONTENTS

Acknowledgements iii
Abbreviations and acronyms viii
Executive summary ix

Introduction 1

1. State of play in intra-African trade and protection 7

1.1. Intra-African trade 8
1.2. Tariffs 15
1.3. Literature on the effect of African Continental Free Trade Area 18

2. Negotiating structure 19

2.1. Issues 20
2.2. Most Favoured Nation *vs.* reciprocity 20
2.3. Base rates 21
2.4. African Continental Free Trade Area configurations and negotiating parties 22

3. Tariff elimination modalities 25

3.1. Defining the level of ambition 27
3.2. Defining liberalization approaches and transition arrangements 34
3.3. Special and differential treatment (SDT) 40

Conclusions 43

References 46
Annexes 47
Endnotes 58

List of Boxes

Box 1: The objectives and guiding principles adopted by the African Union Assembly (Assembly/AU/11(XXV) Annex I) 3

Box 2: Modalities for the African Continental Free Trade Area Tariff Negotiations 3

List of Figures

Figure 1: Value and share of intra-Africa exports in total African exports, 1995–2018 8

Figure 2: Intra-Africa exports by RECs, average 2014–2016 9

Figure 3: Share of intra-African and intra-REC exports in total exports, average 2014–2016 9

Figure 4: REC imports from Africa, 2014–2016 average 14

Figure 5: Weighted average MFN and effectively applied ariffs applied on imports from Africa by product, MFN and AHS, 2016 16

Figure 6: Weighted average tariffs applied on imports from Africa by degree of processing, 2016 17

Figure 7: RECs' implied tariff revenue on imports from RECs, 2016 17

Figure 8: The share of duty-free tariff lines by tariff regime, South Africa and Tunisia 29

Figure 9: Proportion of dutiable intra-African imports represented by excluded tariff lines 32

Figure 10: Estimated tariff revenues protected by different thresholds for tariff lines and import value limits 33

Figure 11: Estimated tariff revenues protected by the exclusion list products 34

Figure 12: Example of tariff elimination schedule with a uniform transition period 36

Figure 13: Example (1) of tariff elimination over modulated transition periods for different product categories 37

Figure 14: Example (2) of tariff elimination over modulated transition periods for different product categories 38

Figure 15: Tariff elimination schedule of the United States for certain products under the original Trans-Pacific Partnership Agreement 41

List of Tables

Table 1: Tariff elimination modalities 4

Table 2: Share in total African exports to the world and to Africa, 2014–2016 average 10

Table 3: Major African economies, 2000 and 2016 10

Table 4: Propensity to export to Africa – Share of exports to Africa in total exports, average 2014–2016 11

Table 5: Destination of intra-African exports by REC, 2014–2016 average 11

Table 6: Major African exporters to RECs, 2014–2016 average 12

Table 7: Africa's product categories exported to the world and to Africa, 2014–2016 average 13

Table 8: Major products exported by RECs to Africa, 2014–2016 average 13

Table 9: Major importers from the world and from Africa, 2014–2016 average 15

Table 10: RECs' imports from RECs as a share of their total imports from Africa, 2014–2016 average........... 15
Table 11: RECs' weighted average tariffs effectively applied on imports from RECs, 2016 16
Table 12: Possible AfCFTA configuration... 22
Table 13: The number of RTA partners and AfCFTA negotiating "parties" 23
Table 14: Comparison of negotiating modalities under WTO and RTAs 26
Table 15: Example of hierarchy of preferences in an AfCFTA party 28
Table 16: Example of AfCFTA market access commitments relative to REC commitments............................ 31
Table 17: Option (b) – Tariff elimination with uniform transition period 35
Table 18: Example of tariff elimination schedule with a uniform transition period.. 36
Table 19: Example (1) of tariff elimination over modulated transition periods for different product categories 37
Table 20: Example (2) of tariff elimination over modulated transition periods for different product categories 37
Table 21: Option (c) – Tariff elimination over modulated transition periods for different product categories 38
Table 22: Option (c) – Threshold levels for each product category.. 39
Table 23: Option (d) – Tariff elimination over modulated transition periods for different product categories according to initial base rates 39
Table 24: Tariff liberalization schedule for Cambodia, Lao PDR and Myanmar under The Republic of Korea-ASEAN FTA 41

Annex Table 1: Synopsis of issues in African Continental Free Trade Area tariff negotiation modalities............ 48
Annex Table 2: Regional Economic Community membership... 50
Annex Table 3: African Continental Free Trade Area negotiating parties.. 52
Annex Table 4: Selected gross domestic product and merchandise trade indicators for African countries, 2016.. 53
Annex Table 5: Weighted average tariffs effectively applied by African countries on imports from different Regional Economic Communities, 2016.. 56

ABBREVIATIONS AND ACRONYMS

ACP	African, Caribbean and Pacific Group of States
AfCFTA	African Continental Free Trade Area
AMOT	African Ministers of Trade
ASEAN	Association of Southeast Asian Nations
AUC	African Union Commission
CEMAC	Economic Community of Central African States
CEN-SAD	Community of Sahel–Saharan States
COMESA	Common Market for Eastern and Southern Africa
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CTF	Continental Task Force
EAC	East African Community
ECCAS	Economic Community of Central African States
ECOWAS	Economic Community of West African States
EPA	Economic Partnership Agreement
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
IGAD	Intergovernmental Authority on Development
LDC	Least Developed Country
MERCOSUR	Southern Common Market
MFN	Most Favoured Nation
NAFTA	North-American Free Trade Agreement
NAMA	Non-Agricultural Market Access
NTM	Non-Tariff Measures
RCEP	Regional Comprehensive Economic Partnership
REC	Regional Economic Community
RTA	Regional Trade Agreement
SACU	Southern African Customs Union
SADC	Southern African Development Community
SDT	Special and Differential Treatment
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
TFTA	Tripartite Free Trade Area
TPP	Trans-Pacific Partnership
TRAINS	Trade Analysis Information System
TWG	Technical Working Group
UEMOA	West African Economic and Monetary Union
UMA	Arab Maghreb Union
UNCTAD	United Nations Conference on Trade and Development
UNECA	United Nations Economic Commission for Africa
USTR	Office of the United States Trade Representative
WITS	World Integrated Trade Solution
WTO	World Trade Organization

EXECUTIVE SUMMARY

The negotiations for an African Continental Free Trade Area (AfCFTA) were unprecedented in the history of regional trade agreements. The AfCFTA would ultimately comprise 55 members, 33 of which are least developed countries (LDCs), and encompass six preexisting regional economic communities (RECs), including customs unions, at different stages of integration with cascading and overlapping membership. In these RECs, a multitude of internal liberalization processes are ongoing, including in inter-REC free trade areas (FTAs) such as Tripartite Free Trade Area (TFTA) and Economic Partnership Agreements (EPAs) with the European Union, as well as under individual RECs. In such a *sui generis* context, structuring negotiations was in itself a daunting challenge but identifying operational modalities for tariff negotiations that would serve for boosting intra-African trade was another. Despite the historic signing in March 2018 of the Agreement Establishing the African Continental Free Trade Area and its entry into force in May 2019, the Agreement is without effect until such a time that operational modalities for AfCFTA tariff negotiations are firmly established, and market access negotiations completed, so that individual AfCFTA parties define their schedules of tariff concessions as an integral part of the Agreement.

This study provides an analysis of ways in which AfCFTA liberalization could effectively be organized and conducted within the constraints imposed by existing policy conditions prevailing in the continent, while seeking to meet the overarching policy objective of boosting intra-Africa trade. The study was originally prepared as part of UNCTAD's technical support to the African Union Commission and African Union member States in their conceptualization and development of the AfCFTA tariff negotiations modalities. As such, the study combines *ex ante* analysis of underlying policy questions conditioning AfCFTA negotiations conducted prior to the actual negotiations with *ex post* observation of how actual negotiations have sought to address these challenges. In so doing, it discusses how the resulting modalities – a blueprint of trade liberalization in Africa – may be assessed in establishing an operational and effective AfCFTA and draws policy implications for the post-modalities phases of tariff negotiations and implementation of liberalization commitments.

INTRODUCTION

The Agreement Establishing the African Continental Free Trade Area (AfCFTA) was signed by the 44 African Union Heads of State and Government on 21 March 2018, Kigali, Rwanda, and entered into force on 30 May 2019 after 22 of the 52 countries that had signed the Agreement ratified the legal instruments.[2] The conclusion of the negotiations and the entry into force of the Agreement marked a major milestone in the four decades of pan-African continental integration efforts since the adoption of the Lagos Plan of Action in 1980 that had set out a roadmap for the establishment of the African Economic Community.[3]

Pan-African negotiations for an AfCFTA were launched in June 2015 with the "indicative" target date for conclusion set for 2017, consistent with the African Union's Action Plan for "Boosting Intra-African Trade and the Establishment of a CFTA" as endorsed by the 18th African Union Summit of African Heads of States and Governments (January 2012).[4] The targeted date of 2017 for the AfCFTA represented fast-tracking by 2 years the completion of stage 4 in respect of free trade area as envisaged by the Abuja Treaty of 1991.[5] The "CFTA roadmap" provided that the first phase of the negotiations would address the core issues of trade in goods and services, followed by the second phase that would address the broader trade-related issues of intellectual property rights, competition policy and investment.[6]

The signature of the AfCFTA Agreement therefore marked the completion *ad interim* of the first phase of the negotiation processes.[7] It is an *ad interim* completion because, as of February 2020, market access negotiations are yet to be concluded, so that the AfCFTA Agreement is equipped with individual members' schedules of commitments for tariff elimination, a process that is expected to continue and which would practically determine the future effect of trade liberalization to be undertaken under the AfCFTA.[8] The negotiations are thus critically important for the AfCFTA and present a series of novel and intricate policy questions that need addressing.

The AfCFTA is unique in nature and the negotiations therefore are unprecedented in the history of regional trade agreements. It is a South-South RTA of an unprecedented scale and configuration. Its 55 members, including Morocco which recently (in 2017) regained its membership to the African Union, are equivalent to one third of the WTO membership. Their income level is generally low with nearly two thirds (33) of the members being LDCs and with only one country (Seychelles) classified as a high-income country by the World Bank.[9] The preparedness for trade integration differs with 10 countries being non-WTO members.

Most significantly for AfCFTA purposes, the Agreement encompasses at least nine pre-existing RECs, including customs unions, at different stages of integration with cascading and overlapping membership.[10] In these RECs, a multitude of internal liberalization processes are ongoing, including in the context of inter-REC RTA negotiations (*e.g.*, Tripartite Free Trade Area (TFTA) being negotiated between 26 members of East African Community (EAC), Common Market for Eastern and Southern Africa (COMESA) and Southern African Development Community (SADC), and RTAs with extra-regional partners such as Economic Partnership Agreements (EPAs) with the European Union concluded by sub-Saharan African ACP sub-regions, as well as within individual RECs (*e.g.*, Trade Liberalization Scheme (ETLS) under the Economic Community of West African States (ECOWAS)).[11]

Against this backdrop, some of the negotiating principles adopted by the parties would pose binding constraints on the manner in which the negotiations would be conducted. The AfCFTA negotiations are to be built upon the *acquis* of the progress made in Regional Economic Communities (RECs), including the recently launched TFTA among COMESA, EAC and SADC. Tariff liberalization is to be conducted based on most-favoured nation (MFN) treatment and reciprocity to achieve substantial liberalization, and subject to variable geometry, flexibility and special and differential treatment (Box 1).

The complex interactions between the *sui generis* trade policy conditions prevailing in the continent on the one hand, and the imperative of pan-African continental integration as expressed in the objectives and guiding principles of AfCFTA on the other, have created unique policy challenges as to the structure and conduct of negotiations, as well as design of liberalization programmes. A series of fundamental questions have confronted, and continue to confront, policymakers and trade negotiators engaged in AfCFTA market access negotiations:

- **Configuration**: How should the negotiations be structured on a continental scale, *i.e.*, who negotiates with whom on what? Do all 55 AfCFTA members need to negotiate bilaterally with all 54 partners in order to eliminate prevailing tariffs? Or

Box 1: The objectives and guiding principles adopted by the African Union Assembly
(Assembly/AU/11(XXV) Annex I)

RECs FTAs as building blocks for the AfCFTA

Preservation of Acquis

Variable geometry

Flexibility and special and differential treatment

Transparency and disclosure of information

Substantial liberalization

MFN treatment

National treatment

Reciprocity

Decisions by consensus

Adoption of best practices

are they to negotiate only with those countries that are outside of their respective RECs (*i.e.*, with which they do not maintain preferential trade arrangements)?

- **Subject matter (base rates)**: Which tariffs to negotiate – MFN or preferential rates? If RECs have achieved comprehensive integration, could the AfCFTA be established by simply extending intra-REC duty-free preferences to all AfCFTA members by the application of the (intra-African) MFN principle? How does this relate to the reciprocity principle?

- **Relation with existing RECs**: How should the negotiations be coordinated with ongoing REC integration processes? Could liberalization under AfCFTA go beyond that of RECs? What if intra-REC liberalization is so limited that the REC members in question need to do greater liberalization under AfCFTA than under RECs?

- **Level of ambition**: How many products and how much trade should be liberalized? What threshold levels should be targeted?

- **Liberalization approach**: How fast or slow should the liberalization processes be?

- **Development dimension**: What development dimension should be warranted when two thirds of membership are LDCs and many of which are in customs union with non-LDCs? How could special and differential treatment (SDT) be operationalized in such a context in a manner not to defeat the overall AfCFTA objective of boosting intra-African trade?

After the official launch of negotiations in July 2015, AfCFTA market access negotiations started in February 2016 when the first inaugural AfCFTA Negotiating Forum was convened. The major framework of the Modalities for AfCFTA tariff negotiations were adopted by the African Union member States in June 2017 at the occasion of the third meeting of the African Ministers of Trade (AMOT) (Niamey, Niger). The Modalities provided for a product coverage of 90 per cent of tariff lines with a general implementation period of 5 years for non-LDCs and 10 years for LDCs, but the resolution of some of the most contentious issues (*i.e.*, threshold for "sensitive" and "the exclusion list" products) had to wait for the seventh meeting of AMOT in December 2018 (Cairo, Egypt) (Box 2).

Subsequently, the seventh meeting of AMOT on 12–13 December 2018 (Cairo, Egypt) agreed on 7 per cent for the value of "X per cent" for sensitive products and 3 per cent for "Y per cent" for the exclusion list products, complemented with the condition that these exclusion list products (3 per cent of tariff lines) do not exceed "10 per cent of the imports from State parties".[12]

Box 2: Modalities for the African Continental Free Trade Area Tariff Negotiations

The modalities for AfCFTA tariff negotiations provide for the product coverage of 90 per cent for both non-LDCs and LDCs, with the implementation periods of 5 years for the former, and 10 years for the latter (Table 1). Tariff phase-down, to be applied on "applied rates", will be based on an equal annual reduction. Two product categories are allowed to deviate from this general tariff elimination formula, namely (i) "sensitive products" of "X" per cent of tariff lines subject to longer implementation periods (10 years for non-LDCs, and 13 years for LDCs), and; (ii) "exclusion list" of "Y" per cent subject to no tariff reduction. The values for "X" and "Y" are undetermined *ex ante* but to be determined on a case-by-case basis and subject to notification and (request-offer) negotiations, with the exclusion list products subject to future reviews in 5 years. Given that "sensitive products" are subject to a longer transition period but to full tariff elimination, the final product coverage of tariff lines subject to liberalization was expected to be greater than 90 per cent in any event.

Table 1: Tariff elimination modalities

	Coverage (%)		Transition periods	
	Tariff line	Import value	Non-LDCs	LDCs
General	90	90	5 years	10 years
Sensitive products (X)	7		10 years	13 years
Exclusion list products (Y)	3	10	No liberalization	No liberalization

Although major technical elements and parameters were clarified and found negotiated solutions in the agreed Modalities for AfCFTA tariff negotiations, some other issues of systemic importance are yet to be fully addressed and clarified in the post-modalities phase of tariff negotiations as the parties prepare their initial tariff offers consistent with the agreed modalities, engage in bilateral request-and-offer negotiations and finalize their respective schedules of tariff concessions.[13] It also remains important to understand rationales behind the particular design of AfCFTA liberalization approaches chosen in order to better appreciate their policy implications.[14] Despite the formal adoption of the tariff negotiations modalities, as well as the signing and entry into force of the AfCFTA, therefore, the questions outlined above remain pertinent to the AfCFTA parties' efforts to design and implement an effective liberalization programme on a continental scale under the AfCFTA.[15] Looking beyond AfCFTA, analysis on tariff negotiation approaches in a developing country region would provide useful lessons for similar policy experimentation in other regions.

In this light, the study provides an analysis of the ways in which AfCFTA liberalization could effectively be conducted in Africa within the constraints of the existing policy conditions prevailing in the content while meeting the overarching policy goal of boosting intra-Africa trade. It discusses how actual negotiations have sought to address some of the fundamental questions above in order to draw policy implications for the post-modalities phases of tariff negotiations and implementation of liberalization commitments.

The study was originally prepared as part of UNCTAD's technical support to the African Union Commission and African Union member States in their conceptualization and elaboration of the AfCFTA tariff negotiations modalities. As such, it contains analytical inputs that were provided *ex ante* to the actual drafting of AfCFTA negotiating modalities text when its contents were not yet developed and still unknown. The paper draws on these analyses and complements them with *ex post* observation of how particular design of the modalities evolved over time in the actual negotiation processes, so as to discusses how they may be assessed in the light of the overarching objective of establishing an operational and effective AfCFTA.

The main arguments and findings of the study are as follows:

- Liberalization under the AfCFTA would pertain, in principle, to trade conducted among the parties that do not maintain preferential trade arrangements. This suggests that liberalization will address MFN rates applied essentially to imports originating in other RECs. Since intra-REC negotiations are *a priori* excluded, AfCFTA negotiations would be essentially conducted among an estimated 28 parties, maintaining some 190 bilateral pairs with each having on average some 13.6 negotiating partners.

- Owing to the difference in size of individual RECs and in degree of overlapping membership, there is strong asymmetry in the number of negotiating partners faced by each AfCFTA party. ECOWAS, as well as Somalia and Western Sahara,[16] would face 27 negotiating partners whereas Libya would face only 5, and EAC, Angola and the Democratic Republic of the Congo, 7 partners.

- Experiences under existing RECs, TFTA and extra-regional RTAs such as EPAs, as well as WTO rules and practices, informed possible liberalization approaches and targets. Accordingly, the possible level of ambition was initially expected to be in the range of 85–90 per cent, as reflected in the general liberalization target set at 90 per cent of products over 5 years in the Modalities text, without taking into account sensitive products.

- The degree of AfCFTA market opening was seen to be conditional upon the level of liberalization achieved in individual RECs given the hierarchy of preferences expected of multiple and cascading regional integration processes. This has raised the important question of how to deal with the cases where intra-REC liberalization is not effective or operational, as the overall AfCFTA level of ambition may be constrained by the level of liberalization achieved by individual RECs. The negotiations sough to address the issue in two ways.
- One remedy to address this eventuality was to institute a credible process of continued monitoring, review and follow-up negotiation processes, so that parallel integration processes at REC and AfCFTA levels could be coordinated and the level of liberalization gradually increased at both levels over time. The Modalities text provided that the sensitive products and exclusion list products were not to be determined *ex ante* but be subject to "notification, negotiation and future reviews" so that the number of excluded products will be reduced in the longer run.
- The other was to set explicit and credible higher liberalization targets so as to induce additional intra-REC liberalization prior to or in parallel with AfCFTA liberalization. This was the effect of *ex ante* determination of the scope of sensitive and exclusion list products, which in practice meant the setting of the liberalization target at 97 per cent together with sensitive products. This level of ambition would certainly require some RECs to improve their existing level of integration in conjunction with AfCFTA liberalization.
- It was significant that the AfCFTA parties agreed on the liberalization target as ambitious as 97 per cent of tariff line coverage with the 3 per cent of excluded products not exceeding 10 per cent of intra-African import value. The higher level of ambition was essentially motivated by the desire to achieve effective liberalization under AfCFTA as it became clear that, due to concentration of intra-African imports on a few products, exclusion of a handful of products would protect the bulk of intra-African imports, thereby nullifying the AfCFTA liberalization objective.
- The "double qualification" rule for the exclusion list products (*i.e.*, condition to meet two requirements on the scope of exclusion in terms of tariff line and import value) was therefore meant to effectively limit the ability of countries to exclude highly traded products from liberalization. This was significant in securing an ambitious liberalization target. However, this level of ambition may defy the basic political economy logic of intra-African regional integration processes and may raise implementation challenges.
- Request-and-offer negotiations that may be conducted following the preparation of initial tariff offers would be based on reciprocity, conducted between those parties having substantial trade interests among 28 negotiating parties. This process may prove to be complex and challenging as commercial interests may acutely differ. "Mutilateralization" of resulting liberalization commitments need to be assured through the application of intra-African MFN principle. Bilateral negotiations may draw on the concept of "substantial trade interest" used in the General Agreement on Tariffs and Trade (GATT)/WTO so as to limit the negotiations to significant bilateral trade pairs for negotiating efficiency.
- The generally low level of development in the continent and the relative prevalence of LDCs, as well as the practical difficulty in operationalizing SDT for those LDCs that are parties to customs unions sharing common external tariffs with non-LDCs, have led the parties to opt for a restrictive approach to SDT, limiting SDT essentially to the length of transition periods, and not to the product coverage. While the treatment of LDCs in customs union remains complex and unresolved, given the limited effect of any possible SDT, practical, case-by-case solutions might prove to be warranted.

Table 1 in Annex provides a synopsis of assessment on different elements of AfCFTA tariff negotiation modalities.

The remainder of the report is organized as follows: Section I provides a review of trends and patterns in intra-African trade and tariff protection in order to gauge stakes in AfCFTA liberalization. Section II examines the structure of negotiations in terms of possible configurations, negotiating parties and roadmaps for negotiations. Section III turns to specific elements of tariff elimination modalities, namely product coverage (sub-section 3.1), liberalization approaches and transition arrangements (sub-section 3.2) and SDT (sub-section 3.3). The last section concludes with some policy implications.

1 STATE OF PLAY IN INTRA-AFRICAN TRADE AND PROTECTION

1.1. INTRA-AFRICAN TRADE

Exports

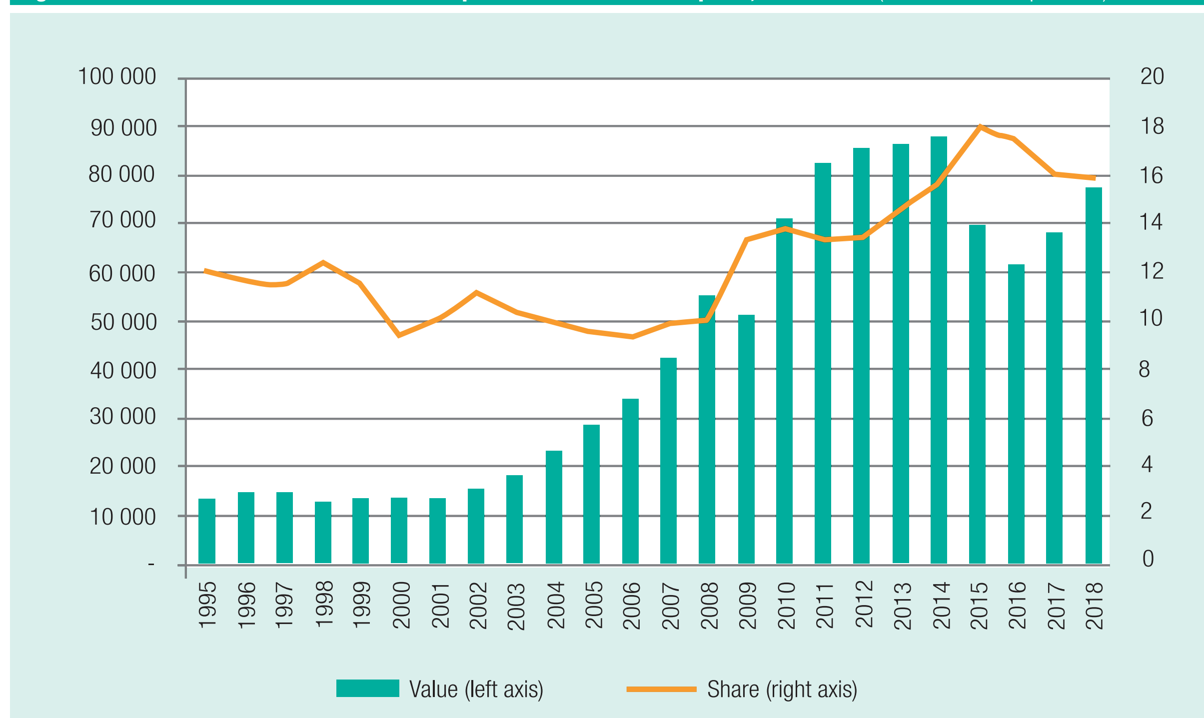
The AfCFTA project started from the premise on the perceived necessity to boost intra-African trade by fast-tracking a continental FTA to support development in the continent. At the root lies the observed low level of intra-African trade, which hovered around 10 per cent of total African merchandise trade until late 2000s (Figure 1). Subsequently, the share of intra-African exports exhibited a rising trend with plummeting commodity prices and indeed nearly doubled to reach 18 per cent by 2015 from 9 per cent in 2000.

The size of intra-African trade is about US$72 billion in exports on average over 2014–2016 (Figure 2). With its US$33 billion worth of intra-African exports, SADC is the largest intra-African exporter of all RECs, accounting for 45 per cent of the total intra-African exports, followed with some distance by ECOWAS (12 per cent) and COMESA (11 per cent). The share of the Arab Maghreb Union (UMA) (5 per cent) and Economic Community of Central African States (ECCAS) (2 per cent) is low. The relative size of their intra-African exports is partly a reflection of their economic size but also their intensity in intra-African and intra-group trade.

For many RECs, intra-African exports account, although rising in recent years, for a small proportion of their total exports (Figure 3). Even SADC that registered the highest proportion of intra-African trade, the share of intra-African trade was just 23 per cent. The bulk of intra-African trade takes place within SADC for SADC countries while for ECOWAS and COMESA countries, just over half of their intra-Africa trade is conducted within RECs. Intra-REC and intra-African exports are low in UMA and ECCAS mainly owing to their geographical proximity to Europe for UMA and high concentration of their export products in fuels that tend to be destined to extra-regional partners for both regions.

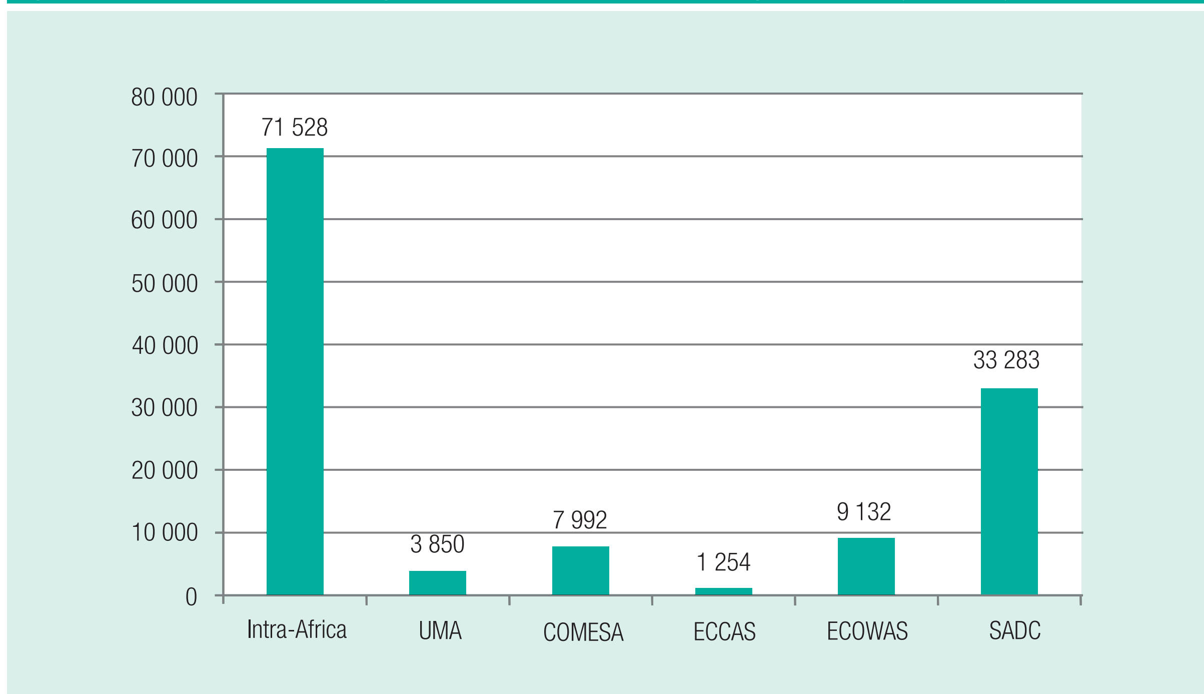
The main intra-African exporters are the two major economies of South Africa and Nigeria, and to a lesser extent, Cote d'Ivoire, Egypt as well as Algeria, Kenya and Ghana (Table 2).[17] South Africa alone accounts for one third of total intra-African exports, and Nigeria, 10 per cent. The level of concentration in intra-African exporters is higher than in global exporters where major commodity exporters of Nigeria, Algeria, and Angola are also ranked high alongside with South Africa.

Figure 1: Value and share of intra-Africa exports in total African exports, 1995–2018 (US$ million and per cent)



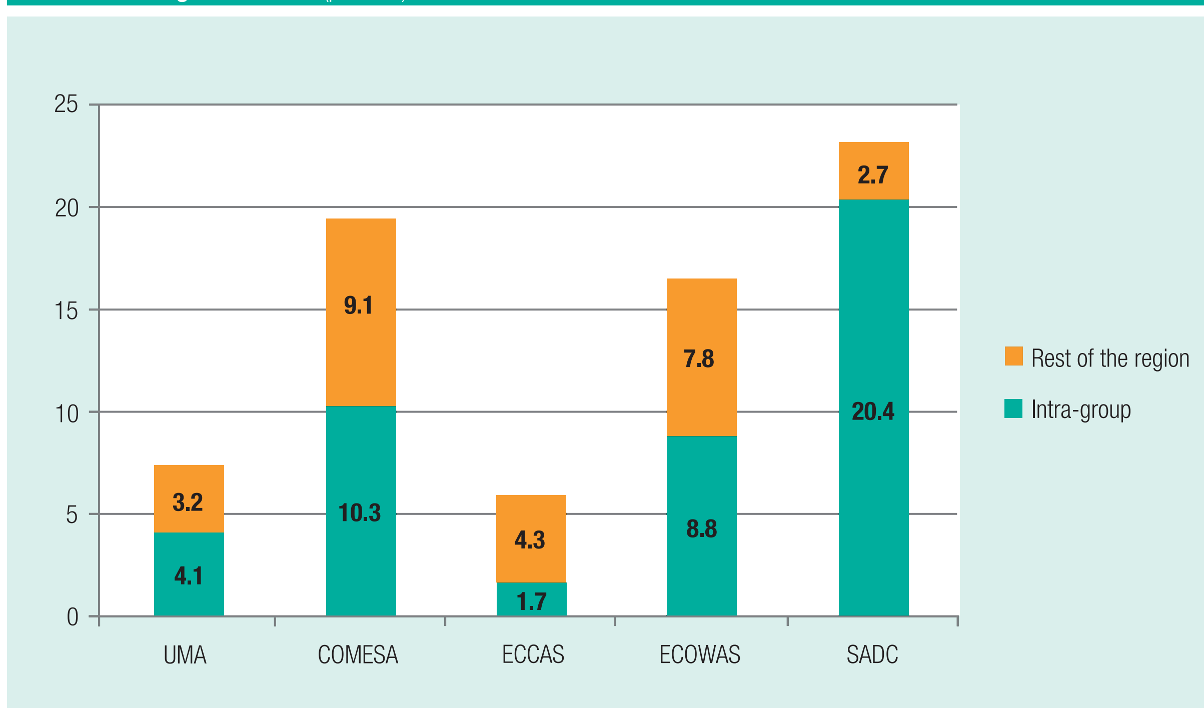
Source: UNCTADStat.

Figure 2: Intra-Africa exports by Regional Economic Communities, average 2014–2016 (US$ million)



Source: UNCTADStat.
Note: Include double counting of overlapping members for RECs.

Figure 3: Share of intra-African and intra-Regional Economic Community exports in total exports, average 2014–2016 (per cent)



Source: UNCTADStat.
Note: Include double counting of overlapping members.

The relative importance of South Africa in the continent is more pronounced in intra-African exports (33 per cent) than in African total exports to the world (18 per cent) or Africa's combined GDP (13 per cent) (Tables 2 and 3). This suggests South Africa's higher propensity to export to the region (30 per cent), including on account of its relative competitiveness in the exports of manufactured goods in the region. Nigeria exports oil not only to the world but also to the continent.

While the share of intra-African trade remains low at 17 per cent on average (2014–2016) for the continent, some countries are more dependent on Africa for their exports, mainly small, often landlocked, non-commodity exporters (Table 4). African markets represent nearly two thirds of Eswatini's total exports, and over 50 per cent for Uganda, Zimbabwe and Togo. It is notable that 30 per cent of South African exports are destined to Africa, a share significantly

Table 2: Share in total African exports to the world and to Africa, 2014–2016 average (per cent)

ECONOMY	World	ECONOMY	Africa
South Africa	18.2	South Africa	33.0
Nigeria	15.1	Nigeria	10.3
Algeria	9.7	Côte d'Ivoire	5.1
Angola	9.2	Egypt	4.5
Egypt	5.8	Algeria	3.4
Morocco	5.3	Kenya	3.3
Tunisia	3.4	Ghana	3.3
Libya	2.9	Namibia	2.9
Côte d'Ivoire	2.9	Morocco	2.7
Ghana	2.5	Zambia	2.6
Africa total	**100.0**	**Africa total**	**100.0**

Source: UNCTADStat.

Table 3: Major African economies, 2000 and 2016

	GDP value (US$ million)		Share in total African GDP (%)	
	2000	2016	2000	2016
Nigeria	74 591	428 293	11.5	19.1
South Africa	138 436	291 856	21.3	13.0
Egypt	95 684	283 962	14.7	12.7
Algeria	54 667	165 979	8.4	7.4
Angola	12 207	117 494	1.9	5.3
Morocco	38 901	103 278	6.0	4.6
Sudan	_	92 739	_	4.1
Kenya	14 465	69 094	2.2	3.1
Ethiopia	8 030	66 719	1.2	3.0
South Sudan	_	63 945	_	2.9
Africa	**650 936**	**2 237 801**	**100.0**	**100.0**

Source: UNCTADStat.

Table 4: Propensity to export to Africa – Share of exports to Africa in total exports, average 2014–2016 (per cent)

Most dependent	Average (2014–2016)	Least dependent	Average (2014–2016)
Eswatini	63.4	Gabon	4.7
Uganda	54.1	Equatorial Guinea	3.9
Zimbabwe	52.6	Sierra Leone	3.7
Togo	51.3	Angola	3.7
Namibia	48.8	Libya	3.6
Senegal	46.0	Liberia	3.1
Gambia	43.0	Sudan	3.1
Djibouti	42.3	Eritrea	2.4
Kenya	42.2	Somalia	0.8
Rwanda	41.2	Chad	0.2
Memo			
South Africa	30.2	Africa total	16.7

Source: UNCTADStat.

higher than the continent's average of 17 per cent. By contrast, for small commodity exporters, the share of intra-African exports is marginal.

RECs are exporting most intensively to their own REC partners, except ECCAS (Table 5). UMA's high intensity to export to the region (UMA) is partly a reflection of its small intra-African export volume with the majority of what UMA exports to Africa is reserved mainly for UMA markets. COMESA's high share as export markets for COMESA is matched with the high share of SADC, implying that a significant proportion of trade takes place in those countries with overlapping membership to COMESA and SADC. ECOWAS's trade appears to be relatively self-contained in West Africa. SADC's intra-African exports are supported with its extremely high intra-SADC exports reaching nearly 90 per cent. For ECCAS, with its particularly small intra-regional trade share, the largest destination is SADC. In general, SADC emerges also as the major export markets for most regions except UMA.

In general, inter-REC trade linkage follows geographical congruity (*e.g.*, UMA-COMESA, COMESA-SADC, ECCAS-SADC) and weak essentially between remote areas, on the North-South, East-West, and North-

Table 5: Destination of intra-African exports by Regional Economic Community, 2014–2016 average (per cent)

		Importer					
		Africa	UMA	COMESA	ECCAS	ECOWAS	SADC
Exporter	Africa	100.0	8.6	28.4	10.9	17.5	58.4
	UMA	100.0	55.9	28.6	6.0	17.2	3.6
	COMESA	100.0	11.2	53.1	13.6	2.6	51.6
	ECCAS	100.0	1.7	26.6	28.3	6.2	68.6
	ECOWAS	100.0	1.7	2.3	9.7	53.1	35.2
	SADC	100.0	1.1	34.7	9.0	4.3	88.2

Source: UNCTADStat.

Central-West axes. The asymmetric distribution of intra-African exports across destination suggest a varying degree of relevance of AfCFTA liberalization for different RECs. In other words, AfCFTA liberalization that would essentially address trade between different RECs conducted essentially on a non-preferential basis (as discussed in section II) would be relevant to approximately 72 per cent of intra-African exports for ECCAS (*i.e.* the share of exports to destined to other RECs), 47 per cent for COMESA, 47 per cent for ECOWAS, 44 per cent for UMA and 12 per cent for SADC.

The major exporters to individual RECs are predominantly the major economies of respective RECs (Table 6). A notable exception to this rule is South Africa which, in addition to its position as the largest exporter to SADC, emerges as the largest exporter to COMESA and ECCAS, the third largest in ECOWAS and the fifth in UMA. Some other non-REC members are also notable, such as Egypt in UMA (due to geographical proximity), UMA members in COMESA (possibly with Libya and Egypt), Nigeria and several congruous SADC/COMESA members in ECCAS and Nigeria in SADC.

Intra-African exports exhibit a marked difference from the region's global exports in product composition (Table 7). While Africa's exports to the rest of the world are traditionally dominated by primary commodities, which account for 82 per cent of total exports, particularly fuels (51 per cent), intra-African exports are characterized by a relative prominence of manufactured goods (43 per cent), particularly "other manufactured goods" and "machinery and transport equipment", as well as all food items (19 per cent). It is notable that 27 per cent of intra-African exports are composed of medium or high-skill and technology-intensive manufactures, as compared to 11 per cent in the case of exports to the rest of the world. This is the case despite the fact that petroleum remains the single most important exported product category for Africa as a whole, and for ECOWAS, ECCAS and SADC.

Among the major exported products of individual RECs are: petroleum; gas; vegetables and fruits; fish and fish products; metalliferous ores and metal scrap; non-metallic mineral manufactures; road vehicles; fertilizers; essential oils; other transport equipment; tobacco, and; iron and steel (Table 8).

Table 6: Major African exporters to Regional Economic Communities, 2014–2016 average (per cent)

	UMA	%	COMESA	%	ECCAS	%	ECOWAS	%	SADC	%
1	Algeria	30.8	South Africa	42.2	South Africa	25.1	Nigeria	21.7	South Africa	48.8
2	Egypt	24.8	Egypt	7.9	Nigeria	10.8	Côte d'Ivoire	21.0	Nigeria	8.7
3	Tunisia	22.0	Kenya	7.7	Zambia	8.3	South Africa	12.1	Namibia	4.8
4	Morocco	8.2	Zambia	6.1	Kenya	6.3	Senegal	8.3	Zambia	4.2
5	South Africa	5.6	Uganda	4.7	Uganda	6.1	Morocco	5.7	Zimbabwe	3.5
6	Côte d'Ivoire	1.8	United Republic of Tanzania	4.6	Cameroon	5.7	Ghana	5.7	Ghana	3.5
7	Libya	1.2	Democratic Republic of the Congo	4.0	United Republic of Tanzania	5.0	Benin	4.9	Botswana	3.5
8	Nigeria	1.1	Tunisia	3.4	Côte d'Ivoire	4.3	Togo	4.0	Angola	3.4
9	Senegal	0.7	Morocco	2.3	Congo	4.0	Burkina Faso	2.3	Eswatini	2.3
10	Gabon	0.6	Algeria	2.2	Namibia	3.7	Egypt	2.0	Democratic Republic of the Congo	2.3

Source: UNCTADStat.

Table 7: Africa's product categories exported to the world and to Africa, 2014–2016 average (per cent)

Partner / Product	Africa	RoW
All allocated products (SITC 0 to 8 + 961 + 971)	100.0	100.0
Primary commodities, precious stones and non-monetary gold (SITC 0 + 1 + 2 + 3 + 4 + 68 + 667+ 971)	56.8	82.2
All food items (SITC 0 + 1 + 22 + 4)	18.6	10.5
Agricultural raw materials (SITC 2 less 22, 27 and 28)	1.3	2.6
Ores and metals (SITC 27 + 28 + 68)	3.7	11.1
Fuels (SITC 3)	26.7	50.7
Manufactured goods (SITC 5 to 8 less 667 and 68)	43.2	17.8
Chemical products (SITC 5)	10.3	3.5
Machinery and transport equipment (SITC 7)	15.3	7.2
Other manufactured goods (SITC 6 + 8 less 667 and 68)	17.6	7.1
Manufactured goods by degree of manufacturing	43.2	17.8
Labour-intensive and resource-intensive manufactures	8.3	4.4
Low-skill and technology-intensive manufactures	8.0	2.3
Medium-skill and technology-intensive manufactures	13.6	6.0
High-skill and technology-intensive manufactures	13.4	5.1

Source: UNCTADStat.

Table 8: Major products exported by Regional Economic Communities to Africa, 2014–2016 average (per cent)

UMA	%	COMESA	%	ECCAS	%	ECOWAS	%	SADC	%
Gas, natural and manufactured	33.2	Vegetables and fruits	6.1	Petroleum, petroleum products	48.3	Petroleum, petroleum products	54.8	Petroleum, petroleum products	9.6
Fish, crustaceans, molluscs and preparations thereof	7.3	Metalliferous ores and metal scrap	6.0	Metalliferous ores and metal scrap	14.4	Gold, non-monetary	8.5	Nonmetallic mineral manufactures, n.e.s.	7.7
Fertilizers other than group 272	6.2	Essential oils for perfume materials	5.0	Other transport equipment	9.8	Other transport equipment	3.8	Road vehicles	6.5
Road vehicles	4.6	Tobacco and tobacco manufactures	4.6	Non-ferrous metals	5.3	Essential oils for perfume materials	2.6	Iron and steel	3.6
Nonmetallic mineral manufactures, n.e.s.	3.6	Non-ferrous metals	4.5	Inorganic chemicals	2.7	Nonmetallic mineral manufactures, n.e.s.	2.4	Other industrial machinery and parts	3.4

Source: UNCTADStat.

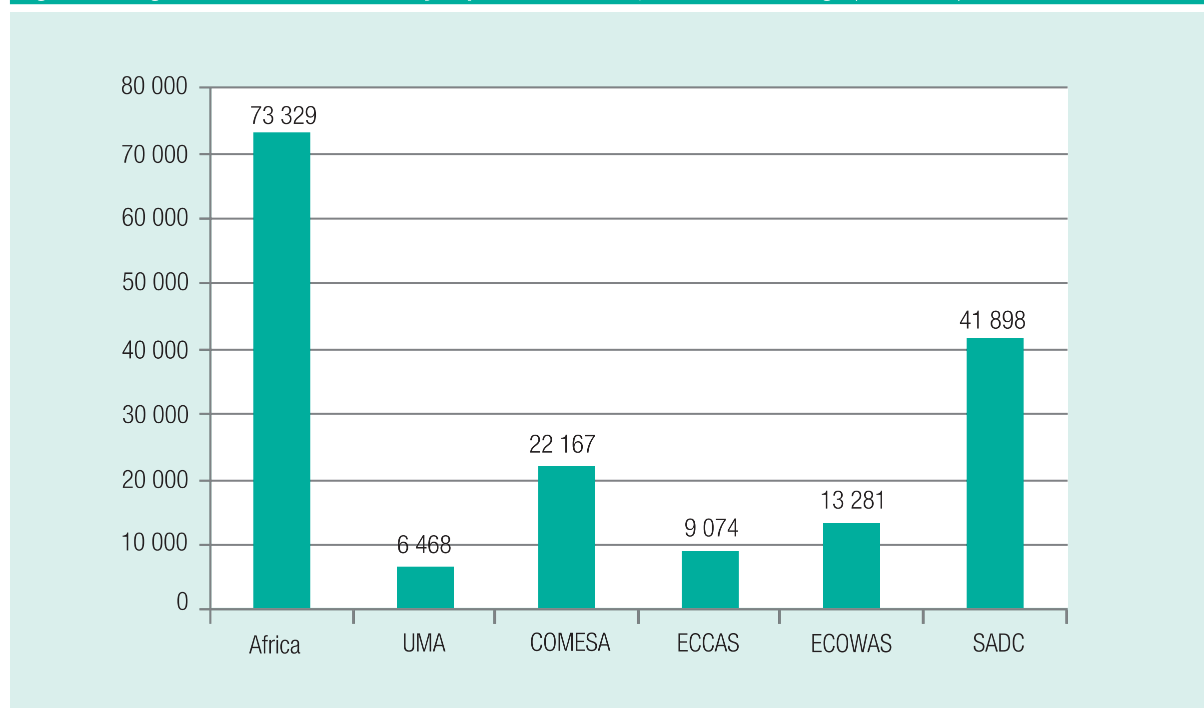
Imports

As to imports, again, SADC is by far the largest market for African exporters absorbing US$42 billion worth of intra-African imports and representing 57 per cent of total intra-African imports, followed by COMESA (30 per cent), ECOWAS (18 per cent), ECCAS (12 per cent) and UMA (9 per cent) (Figure 4). This reflects the absolute market size of SADC region but also the region's high propensity to import from African sources. The share of SADC in total intra-African imports is as high as 57 per cent as noted, but this compares to its share in total African imports from the world, which is just 32 per cent. In contrast, UMA (and to a lesser extent ECCAS) exhibits the opposite pattern with its imports heavily skewed towards the sources outside the continent given its geographical and economic ties with Europe.

South Africa remains the largest market for both global and intra-African imports (Table 9). North African countries are the larger importers for global imports while for intra-African imports, Southern and Western African countries are more prominent. The relative importance of South Africa in total intra-African trade is more pronounced in exports, with its share of 33 per cent being more than double the size of imports (14 per cent). Nigeria's small share in intra-African imports, despite its market size, is also notable.

As is the case with exports, RECs' imports tend to originate in the same RECs and the imports originating outside the RECs, a proxy of trade to be liberalized under AfCFTA, vary but remain modest (Table 10). SADC, ECOWAS and, to a lesser extent UMA, stand out in their high propensity to import from their own REC partners. These are in principle preferential imports and expected to be affected by AfCFTA only to a limited extent. Their extra-REC imports would be in the order of 17 per cent for SADC, 30 per cent for ECOWAS and 42 per cent for UMA. By contrast, ECCAS in particular exhibits a particularly low level of intra-REC imports, hence a high share of extra-REC imports, reaching 80 per cent. The region is therefore expected to be most affected by AfCFTA liberalization. As regards COMESA and SADC, if TFTA integrating both RECs markets (and EAC) is taken account, the scope of extra-REC imports that may be liberalized additionally by AfCFTA would be even smaller.

Figure 4: Regional Economic Community imports from Africa, 2014–2016 average (US$ million)



Source: UNCTADstat.

Table 9: Major importers from the world and from Africa, 2014–2016 average (per cent)

ECONOMY	Share in Africa's Imports from the World	ECONOMY	Share in Africa's imports from Africa
South Africa	15.6	South Africa	14.4
Egypt	11.8	Botswana	7.7
Algeria	9.7	Namibia	7.3
Nigeria	9.0	Zambia	7.0
Morocco	7.7	Zimbabwe	3.8
Tunisia	4.0	Nigeria	3.6
Angola	3.8	Côte d'Ivoire	3.5
Ethiopia	3.0	Democratic Republic of the Congo	3.2
Kenya	3.0	Ghana	3.2
Libya	2.6	Mozambique	3.2

Source: UNCTADstat.

Table 10: Regional Economic Community' imports from Regional Economic Community as a share of their total imports from Africa, 2014–2016 average (per cent)

		Exporter					
		Africa	UMA	COMESA	ECCAS	ECOWAS	SADC
Importer	Africa	100.0	9.3	20.2	7.5	22.1	55.6
	UMA	100.0	58.1	29.1	1.2	5.3	8.0
	COMESA	100.0	7.9	41.4	7.6	1.8	66.4
	ECCAS	100.0	5.7	20.8	19.2	21.2	46.7
	ECOWAS	100.0	9.8	3.9	1.9	70.2	15.4
	SADC	100.0	0.8	17.8	8.9	10.8	83.8

Source: UNCTADStat.

1.2. TARIFFS

The initial protection patterns reveal the level of trade integration achieved within each REC and remaining barriers affecting their intra- and inter-REC trade, and thus is informative of the possible effect of tariff elimination under the AfCFTA (Table 11). Trade-weighted average tariff applicable to intra-REC trade is generally low, reflecting existing preferential trade arrangements within each REC where average rate of protection is in the order of 1.6–3.2 per cent. For Africa as a whole, the average tariff is 3.4 per cent.

Extra-REC imports are generally faced with higher average protection than intra-REC imports, reflecting the prevalence of non-preferential MFN duties applied to these imports. Some directions of extra-REC imports are subject to relatively high average tariffs, including UMA's imports from ECCAS, ECOWAS and SADC; COMESA's imports from ECCAS and ECOWAS; ECCAS applies relatively high tariffs from all imports but especially those from UMA and SADC; ECOWAS's imports from UMA, COMESA, SADC and ECCAS; and SADC's imports from UMA and COMESA. These are likely to be most affected by AfCFTA liberalization.

Table 5 in Annex provides average tariffs applied by each country on imports from different RECs.

On average, intra-African trade is faced with the trade-weighted average rate of 3.4 per cent for effectively

Table 11: Regional Economic Communities' weighted average tariffs effectively applied on imports from Regional Economic Communities, 2016 (per cent)

		Exporter					
		Africa	UMA	COMESA	ECCAS	ECOWAS	SADC
Importer	Africa	**3.4**	5.5	5.2	1.5	3.9	2.3
	UMA	4.3	**3.1**	3.8	7.9	14.9	7.0
	COMESA	3.6	0.3	**3.2**	5.8	5.2	4.1
	ECCAS	10.1	18.7	7.6	**5.3**	8.8	10.6
	ECOWAS	5.6	10.2	10.7	7.3	**3.0**	9.8
	SADC	2.3	15.2	6.3	0.8	0.3	**1.6**

Source: TRAINS/WITS.
Note: Latest available years for missing years. Includes 50 countries (with 13 mirror import data).

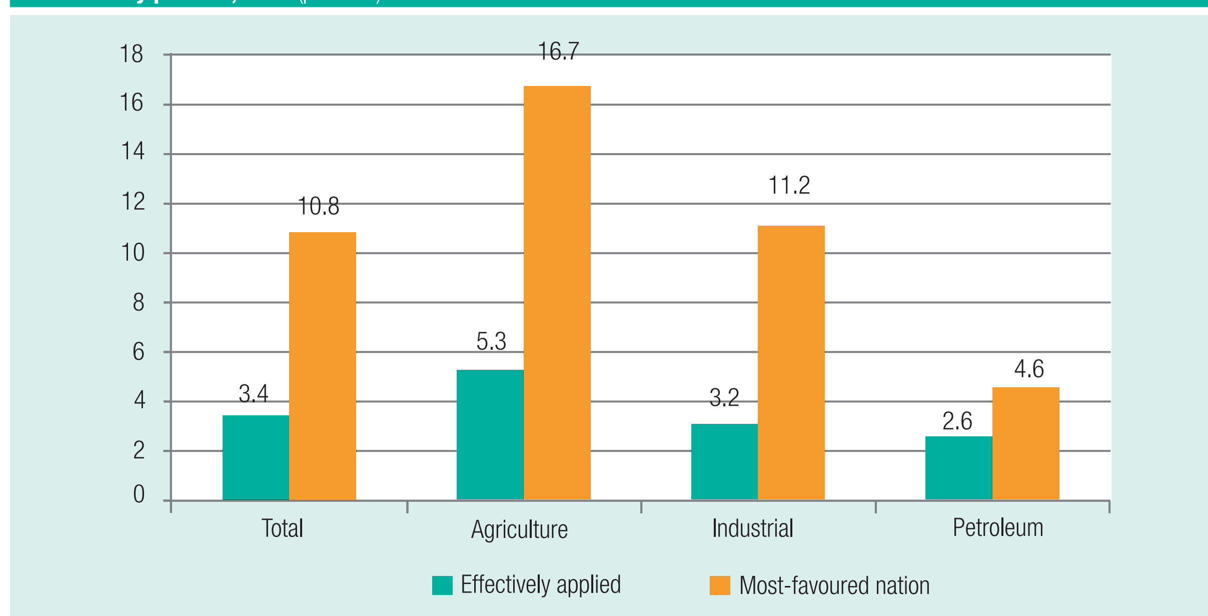
applied tariffs as compared to 10.8 per cent for MFN tariffs, with the different suggesting the existence of trade preferences (Figure 5). Average rate is significantly high for agriculture reflecting its sensitive character while lower rates apply to industrial products and petroleum.

In terms of degree of processing, tariff escalation is observable with higher rates applicable to intermediate goods as compared to raw materials, and to consumer goods as compared to intermediate goods (Figure 6).

The estimated value of tariff revenues for the importing governments (*i.e.* costs incurred by exporters) implied by protection are indicative of the areas and magnitude of possible static gains from AfCFTA liberalization on account of tariff savings, *i.e.* efficiency gains, that may be realized as a result of AfCFTA tariff elimination (Figure 7).

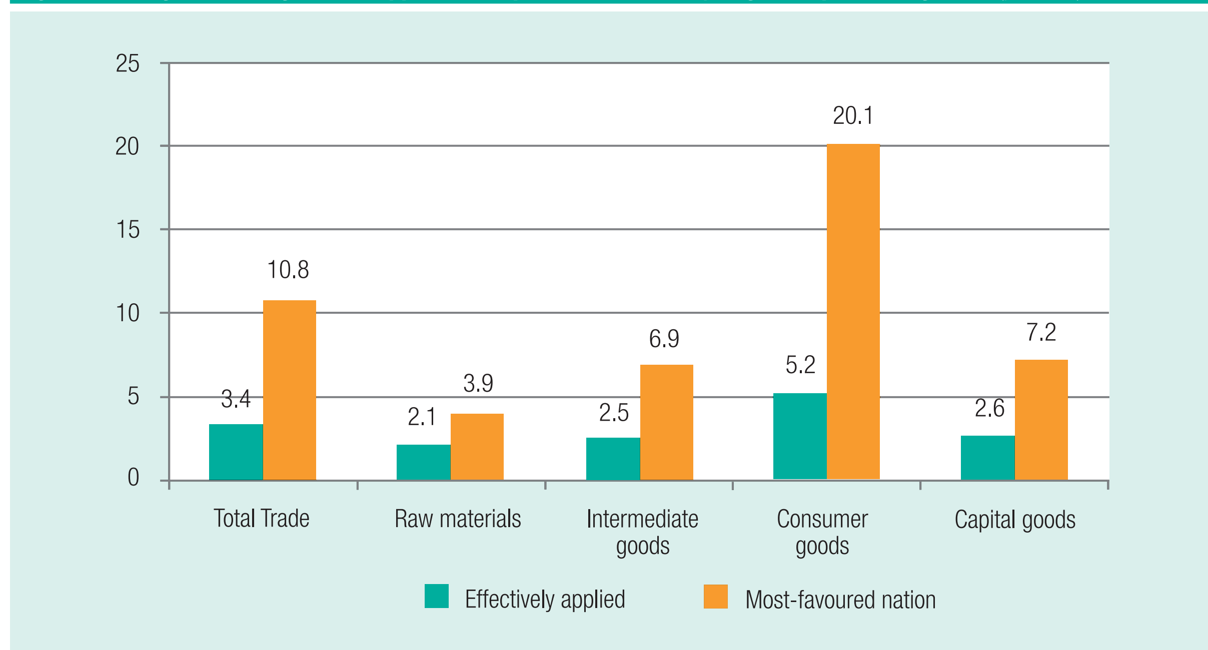
Tariff savings on imports from SADC in COMESA, ECCAS and ECOWAS markets stand out as imports from SADC in these markets are marked by high

Figure 5: Weighted average most-favoured nation and effectively applied tariffs on imports from Africa by product, 2016 (per cent)



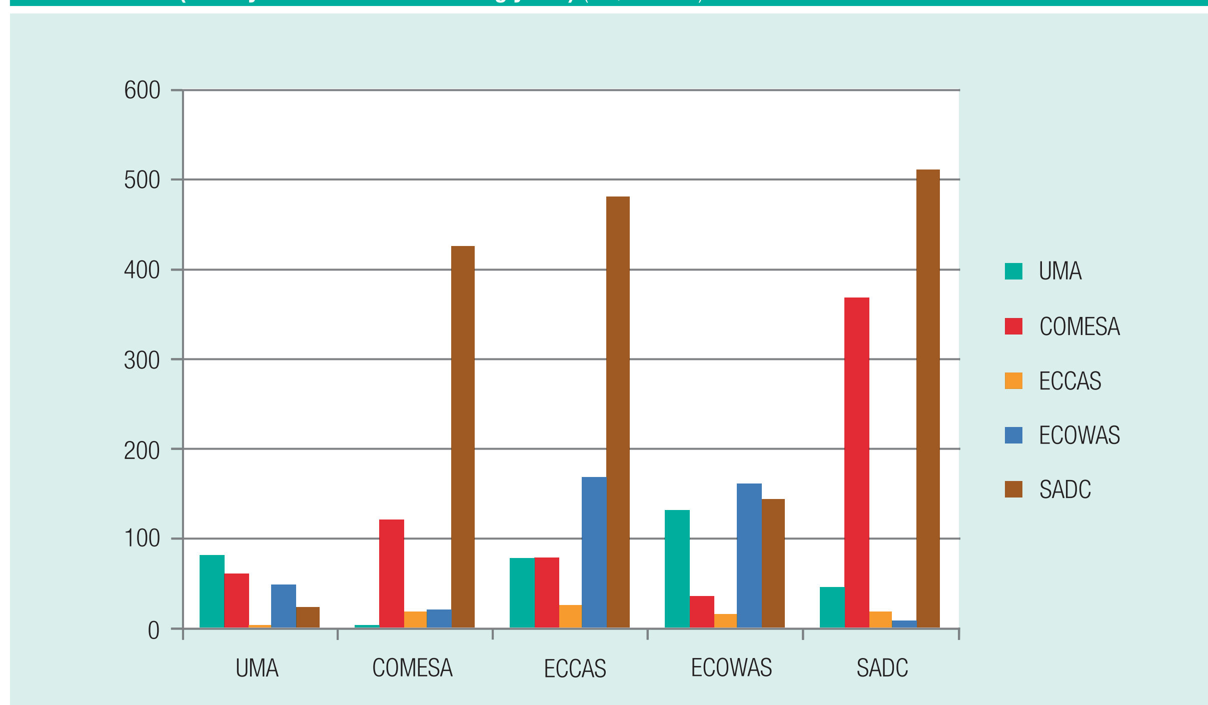
Source: TRAINS/WITS.
Note: Latest year available for missing years. "Effectively applied rates" are inclusive of preferential tariff rates when available.

Figure 6: Weighted average tariffs applied on imports from Africa by degree of processing, 2016 (per cent)



Source: TRAINS/WITS.
Note: Latest year available for missing years. "Effectively applied rates" are inclusive of preferential tariff rates when available.

Figure 7: Regional Economic Communities' implied tariff revenue on imports from Regional Economic Communities, 2016 (latest year available for missing years) (US$ millions)



Source: TRAINS/WITS.

volume and attract sizable protection. In these markets, SADC faced an average tariff of 10.6 per cent (ECCAS), 4.1 per cent (COMESA) and 9.8 per cent (ECOWAS) respectively as reported in table 10. This may reflect the fact that relative competitiveness of SADC exports attracts higher protection in different markets. In other words, AfCFTA liberalization would set to benefit SADC exports in these markets. The imports from COMESA also appear to generate high tariff revenues in SADC, COMESA and ECCAS markets, so do the imports from ECOWAS in ECCAS markets.

It is notable that tariff revenues arising from intra-REC trade remain substantial. The large amount of tariff savings expected for intra-SADC imports totaling US$500 million reflects the large absolute amount of intra-SADC imports which magnified the relatively low average protection of 1.6 per cent. The high revenue implied from intra-ECOWAS imports appears to be reflective of persistent tariffs applied within ECOWAS and its high intensity of intra-ECOWAS trade as reported above.[18] These suggest that intra-REC tariff remains an issue for boosting intra-African trade in the context of AfCFTA.

1.3. LITERATURE ON THE EFFECT OF AFRICAN CONTINENTAL FREE TRADE AREA

A CGE model-based analysis assuming a full liberalization of all tariffs on all products in Africa suggests that AfCFTA liberalization would generate one-off increase in global welfare of US$7.3 billion in 2025 and the largest gains are expected from South Africa (US$5.7 billion), followed by Nigeria (US$2 billion) and Kenya (US$1.3 billion).[19] Another study finds that AfCFTA would increase real income for African countries in the order of 0.2 per cent or US$296 million in 2022.[20] Regarding terms of trade, the AfCFTA would increase total African exports to the world by 4.0 per cent (or US$25.3 billion) in 2022 but intra-African trade would increase by 52.3 per cent (or US$34.6 billion), mainly in agriculture and food, industry and services sectors.[21] This is expected to increase, according to the study, the share of intra-African trade form the current 10.2 per cent (in 2010) to 15.5 per cent in 2022. Individually, African sub-regions and countries are generally expected to see their exports increase to a different degree, but many countries may see their real income worse off after AfCFTA liberalization due to increased competition, loss of tariff revenue and terms of trade effects.

More recent UNCTAD estimates find that substantial welfare gains of about US$16.1 billion arise from a full FTA scenario.[22] The tariff revenue loss is equivalent to 9.1 per cent of current revenues. GDP is expected to grow by 0.97 per cent and total employment rises by 1.17 per cent. Intra-African trade is estimated to grow by 33 per cent and Africa's total trade deficit is cut in half. The study finds that exempting certain "sensitive" products from liberalization, if one of the 43 product sectors so defined in GTAP database that accounts for the highest tariff revenue from intra-African imports for each country is excluded, would reduce overall welfare gain to US$10.7 billion in the long-run but tariff revenue losses are reduced to US$3.2 billion as compared to US$4.1 billion under the full FTA scenario. Intra-African trade is expected to grow by 24 per cent, but Africa's overall trade deficit only shrinks by 3.8 per cent.

2

NEGOTIATING STRUCTURE

Given the sheer number of players, pre-existing preferential trade arrangements under RECs and overlapping membership of many in several RECs, AfCFTA negotiations have faced a series of unique challenges in devising an operational negotiating methodology to organize negotiations among 55 African Union members and realize an effective market opening on a continental scape. The issue was how negotiations among 55 countries could be effectively and efficiently organized in a credible process, and how preexisting preferences in sub-regional RECs should be treated in a larger AfCFTA. The challenge translates into the questions of defining: (i) negotiating parties; (ii) negotiating partners; (iii) subject of negotiations, and: (iv) suitable trade liberalization modalities. The essentially preliminary organizational questions of (i)–(iii) were not fully addressed in the modalities-phase of negotiations while some elements of liberalization modalities (iv) remain to be negotiated and clarified in the post-modalities phase of market access negotiations, particularly in bilateral request-and-offer processes.

2.1. ISSUES

The basic configuration of negotiations largely determines the processes through which a continental FTA is reached. Hence, it is a matter of defining a realistic and pragmatic roadmap towards that goal.

At the practitioners' level, there was the view that the fastest way to achieve a continental free trade was simply to extend REC preferences to all African countries, so that the future AfCFTA will supersede existing RECs and that once AfCFTA is established, all existing RECs will cease to exist. From this perspective, the issue in AfCFTA tariff liberalization was mainly to multilateralize (among AfCFTA parties) existing preferential duty-free treatment applied within RECs to all AfCFTA parties by the application of the MFN principle and further "improve" such preferences on a continental scale.

This approach appears to understate the critical role of "reciprocity" in trade negotiations and would prove to be impracticable, as countries have little incentive to undertake liberalization without return. If unilateral extension of REC preferences to all African Union members had been possible, no new negotiations for AfCFTA would have been required in the first place. Practical questions confronting policymakers was precisely how to make such continent-wide liberalization happen among 55 countries constrained by conflicting incentives arising from the multiple layers of preferential arrangements accumulated over the four decades of regional integration efforts and disintegration episodes. The issue was therefore to identify a realistic and pragmatic roadmap to configure and conduct negotiations on a continental scale while recognizing the practical constraints posed by political economy of trade policy and multiple sub-regional integration processes.

History of RTAs provides limited guidance in this respect. The sheer size of AfCFTA is exceptional, only paralleled by multilateral trade negotiations. The cases of "nested" FTAs comprising multiple, preexisting sub-regional RTAs are not many. The few FTAs comprising preexisting sub-regional RTAs are at most bilateral in scope with an FTA or customs union being one party to the bilateral FTA (*e.g.*, European Union-ECOWAS EPA, China-Association of Southeast Asian Nations (ASEAN) FTA, European Union-Southern African Customs Union (SACU) FTA). Only the original Trans-Pacific Partnership (TPP) Agreement composed of 12 members including the United States, comprising the pre-existing then North-American Free Trade Agreement (NAFTA) and US-bilateral FTA partners, and the Regional Comprehensive Economic Partnership (RCEP) with 16 members including ASEAN, may be seen as comparable to the AfCFTA. Yet, no FTAs has come close to the scale and level of complexity exhibited in AfCFTA configuration, comprising at least one inter-REC FTA (TFTA), *four* FTA-RECs (SADC, COMESA, ECCAS, UMA) and four customs unions (ECOWAS, EAC, SACU and Economic Community of Central African States (CEMAC)).

2.2. MOST FAVOURED NATION *VS.* RECIPROCITY

One of the key issues in this endeavour is how to apply the MFN principle among the parties, a key AfCFTA negotiating principle.[23] The "MFN" principle arises from the egalitarian concern in the sense of equality in treatment among members, but is also a powerful instrument to achieve negotiating efficiency. The "MFN" principle in the AfCFTA context is different from MFN in the WTO context in that MFN in the AfCFTA context applies only to AfCFTA participants (*i.e.*, conditional on the AfCFTA membership) and does not extend to non-AfCFTA parties as would have been implied by MFN obligations under WTO. Basically, this implies no differentiation of treatment, including on tariffs, among AfCFTA parties, *i.e.*, MFN treatment of AfCFTA preferences among all AfCFTA parities.

This principle needs to be understood carefully. The MFN principle cannot be logically extended to pre-existing intra-REC preferences; *i.e.*, a party to REC should be able to apply different tariffs to REC partners and (non-REC) third-country AfCFTA partners, before and even after the AfCFTA liberalization. In other words, intra-REC preference should be deemed "grandfathered". Otherwise, as noted, MFN principle would imply immediate extension of REC preferences to all AfCFTA parties, which does not make sense when RECs have achieved a deeper level of integration.[24]

Therefore, it is critical to understand the MFN principle in conjunction with "reciprocity", as is the case in GATT tariff negotiations. The AfCFTA negotiations should aim at eliminating existing tariffs based on reciprocity, a key instrument of any trade negotiations, so that tariff concessions are made to the extent that others reciprocate a similar degree of tariff concessions. The MFN treatment is applied only to the extent that reciprocity is satisfied. Hence, MFN cannot be applied in a vacuum to any tariffs but only after the reciprocity requirements are satisfied covering a "critical mass" of trade and partners. Reciprocity in this sense represents a key instrument of market opening as it creates incentive for overcoming adjustment concerns that would otherwise hinder unilateral opening, and the MFN principle has the effect of magnifying the liberalization effect by eliminating the need to conduct reciprocity-based bilateral negotiations with each and every party of a trade agreement.

2.3. BASE RATES

The issue of "base rates" of AfCFTA market access negotiations is not a benign technical issue but an important systemic one with far-reaching implications. The selection of particular tariffs as base rates for AfCFTA liberalization would largely determine the overall configuration of negotiations as applicable tariff rates differ across trading partners for a given country.

Reciprocity-based negotiations with (intra-African) "multilateralization" of resulting tariff concessions through application of the MFN clause implies that the basis of AfCFTA negotiation should be the MFN rates, not preferential rates. That is, AfCFTA negotiation is not about automatic extension of pre-existing REC preferences. Yet, RTA negotiations differ from WTO negotiations in that they are based on MFN "applied" rates and aim at elimination of existing tariffs. WTO negotiations are based on MFN "bound" rates and aim essentially at tariff reduction, and not necessarily elimination thereof. WTO bound rates are irrelevant for the purpose of RTAs as RTAs are meant to achieve the elimination of existing tariffs whereas WTO bound rates can be higher than applied MFN rates or non-existent for some products and countries.

In principle, negotiations for AfCFTA could address either:

(i) Both MFN and preferential rates applied to bilateral imports from REC partners and extra-REC partners; or

(ii) Essentially MFN rates only that are applied to bilateral imports mainly from extra-REC partners without preferential trade arrangements.

Under scenario (i), intra-REC preferential tariffs applied to REC partners would also be subject to negotiations for liberalization in addition to non-preferential MFN rates applied to extra-REC partners. Under scenario (ii), negotiations would exclude in principle intra-REC trade and essentially address MFN tariffs applied to extra-REC partners only. The latter makes more sense and appears to be the approach preferred by the agreed African Union Roadmap as endorsed by the African Union Summit in 2012 which reaffirmed the premise of preserving REC acquis.

In theory, scenario (i) – setting both exiting preferential rates and MFN rates as base rates for REC partners and extra-REC partners separately – is possible. If there remain intra-REC preferential duties, this could be fixed and reduced to zero over transition period in the same way as positive MFN rates are reduced to zero. In relation to MFN principle, different and lower intra-REC preferential rates may be deemed as "grandfathered" from MFN principle as noted above. However, this approach implies that AfCFTA would entail renegotiation of intra-REC tariff schedules, thereby overriding existing REC preferences and interfering into intra-REC matters, which might go counter to REC *acquis,* especially when intra-REC liberalization is still ongoing such as under ECOWAS or TFTA. Most importantly, by increasing negotiating parties, this approach would significantly reduce negotiating efficiency.

The selection of option (ii) above implies that the base rates for AfCFTA liberalization are the applied MFN rates (or other generally applied rates for non-WTO members). In trade negotiations, the base rates are usually defined as those applicable at the commencement of negotiations (*i.e.*, June 2015 in the

case of AfCFTA) and subject to standstill requirement not to increase them, so as to preempt any roll-back by members of existing MFN rates prior to the negotiations with a view to improving their bargaining positions. Other preferential rates applied under pre-existing inter-REC FTAs (such as TFTA) or RECs are governed and "bound" under those respective RTAs and "grandfathered" in principle. Therefore, setting positive MFN duties as the base rates under AfCFTA does not mean any allowance for REC members to raise existing applied preferential (often zero) rates up to the level of positive MFN base rates.[25]

In this respect, the agreed AfCFTA Modalities text is implicit and refers only to "applied rates" as base rates. This would need to be understood as MFN applied rates.[26] Setting MFN applied rates as base rates does not preclude the possibility of each REC's eliminating in tandem residual intra-REC MFN or preferential tariffs as and when necessary at their own initiative. As discussed below, this would prove to be necessary in some cases.

2.4. AFRICAN CONTINENTAL FREE TRADE AREA CONFIGURATIONS AND NEGOTIATING PARTIES

Limiting liberalization to MFN applied rates would significantly increase the negotiating efficiency by eliminating the need to renegotiate intra-REC tariffs internally in every REC, thereby significantly reducing possible negotiating pairs. The approach would allow REC to retain the flexibility to maintain existing REC tariff schedules that reflect intra-REC economic trade-offs and political balance. From this perspective, AfCFTA negotiations could be conceptualized according to the following general configuration (Table 12):[27]

Negotiations would basically address MFN tariffs essentially applied on inter-REC trade and do not address *a priori* intra-REC preferential tariffs. Negotiations are essentially inter-REC in scope with negotiating partners being those in other RECs. The parties to the recently launched TFTA, for which market access negotiations are still ongoing but where its intra-TFTA liberalization would be determined under the terms of TFTA, could constitute one block in the senses that its members do not negotiate each other, but would have to do so with non-TFTA members individually. The three operational customs unions – SACU, EAC and ECOWAS – would form single negotiating entities respectively, by virtue of operational common external tariffs. There are five members in SACU, five in EAC and 15 in ECOWAS. To this could be added CEMAC (within ECCAS) composed of 6 members, which could be counted as a uniform group assuming an operational customs union. As in TFTA parties, other members of REC-FTAs (COMESA, SADC, ECCAS, UMA FTAs) would not negotiate among themselves but would negotiate individually with extra-REC partners to agree on their own individual tariff schedules.

Table 12: Possible African Continental Free Trade Area configuration

	UMA members individually	TFTA members individually	ECCAS members individually	ECOWAS members as a group (as a CU)
UMA members individually (4)	**No *a priori* negotiation**	Negotiation	Negotiation	Negotiation
TFTA members individually (19)	Negotiation	**No *a priori* negotiation**	Negotiation	Negotiation
ECCAS members individually[28] (2)	Negotiation	Negotiation	**No *a priori* negotiation**	Negotiation
ECOWAS members as a group (as a CU) (1)	Negotiation	Negotiation	Negotiation	**No *a priori* negotiation**

Note: Four customs unions – EAC, ECOWAS, SACU and CEMAC – are counted as one respectively. Libya in UMA, as well as Angola, Burundi and Democratic Republic of the Congo from ECCAS, are counted here as TFTA members by virtue of their dual membership. TFTA here includes South Sudan which is not a signatory. Somalia and Western Sahara do not belong to any of the above RECs. Intra-REC negotiations are *a priori* excluded. It may prove to be necessary for certain RECs to advance internal liberalization in conjunction with AfCFTA process in case internal free trade area is not complete or not operational while a higher level of ambition is required under AfCFTA, in which case intra-REC coordination ("negotiation") for further liberalization might prove to be necessary by implication.

This suggests that AfCFTA negotiations could essentially be conducted among **28 parties**[29] – 19 TFTA members[30] (counting SACU and EAC as one respectively, out of its 26 countries), ECOWAS as one entity, four UMA members (here excluding Libya counted as TFTA member by virtue of its dual membership to COMESA), two ECCAS members (CEMAC and Sao Tome and Principe, here excluding Burundi, Democratic Republic of the Congo and Angola, counted as TFTA members by virtue of their dual or triple membership to COMESA for Burundi and Democratic Republic of the Congo, and to SADC for Angola and Democratic Republic of the Congo), in addition to Somalia and Western Sahara which do not belong to any trade-integrating RECs.[31] These 28 parties represent 8 individual non-LDCs, 15 individual LDCs and 4 customs unions (plus Western Sahara). As intra-REC negotiations are *a priori* excluded,[32] this would represent **190 bilateral relations**, and not 378 that may be implied by 28 negotiating parties (28*27/2) or 1485 bilateral relations implied by 55 members (55*54/2).

This implies that a typical AfCFTA country would have on average 13.6 negotiating partners (Table 13). Western Sahara, Somalia and ECOWAS would have the largest 27 negotiating partners by virtue of their non-adherence to any FTA while Libya would have only 5 negotiating partners; and Angola, the Democratic Republic of the Congo and EAC would have 7 partners, by virtue of their multiple membership, especially to TFTA and ECCAS. Libya therefore would be negotiating only with ECOWAS, CEMAC, Sao Tome e Principle, Somalia and Western Sahara; and Angola, the Democratic Republic of the Congo and EAC with 4 UMA members plus ECOWAS, Somalia and Western Sahara.

While the principle of inter-REC negotiations excluding intra-REC negotiations significantly reduces the number of possible bilateral pairs, thereby enhancing negotiating efficiency, this is still a large number and practically unmanageable if negotiations are to be conducted solely on the basis of bilateral request-and-offer processes, hence the importance of a set of common tariff elimination “modalities” to guide AfCFTA parties to prepare schedules of tariff concessions as initial market access offers for the purpose of AfCFTA liberalization.

Once initial tariff offers are prepared according the to agreed Modalities, this could be complemented with bilateral request-and-offer negotiations among

Table 13: The number of regional trade agreements partners and African Continental Free Trade Area negotiating “parties”

	REC-FTA partners	Negotiating Partners
Western Sahara	0	27
Somalia	0	27
ECOWAS (10)	0	27
Algeria	4	23
Mauritania	4	23
Morocco	4	23
Sao Tome and Principe	4	23
Tunisia	4	23
CEMAC (6)	4	23
Comoros	18	9
Djibouti	18	9
Egypt	18	9
Eritrea	18	9
Ethiopia	18	9
Madagascar	18	9
Malawi	18	9
Mauritius	18	9
Mozambique	18	9
Seychelles	18	9
South Sudan	18	9
Sudan	18	9
Zambia	18	9
Zimbabwe	18	9
SACU (5)	18	9
Angola	20	7
Democratic Republic of the Congo	20	7
EAC (5)	20	7
Libya	22	5
Total	**376**	**380**
Bilateral pairs	188	190
Average	13.4	13.6

possible 190 bilateral pairs in fine-tuning product coverage and tariff phase-in period in order to address some substantial bilateral trade interests on a product-by-product basis and to ensures reciprocity and balance of concessions. Once such reciprocity requirements are satisfied, the results of bilateral concessions would be multilateralized based on the MFN principle among all AfCFTA parties. The agreed Modalities text is however implicit in this regard.

While also implicit in the agreed AfCFTA tariff negotiating Modalities, such bilateral request-and-offer negotiations could borrow GATT/WTO instruments of tariff negotiations, which allow the parties to limit negotiating partners in bilateral negotiations only to those having important or substantial commercial interests. In GATT/WTO, this has been achieved by recognizing “initial negotiating rights” for those countries having “principal supplying interest” or “substantial interest” (GATT Article XXVIII). The mechanism would allow the parties to limit the negotiating partners only to those having a substantial trade interest, which would then need to be clearly defined. Ideally, it should cover “critical mass” of imports for importing countries while also recognizing the importance of the product for a particular market for exporting countries.[33]

3

TARIFF ELIMINATION MODALITIES

RTAs are about tariff elimination. Thus, it would appear straightforward to establish tariff eliminating modalities for an RTA, which essentially consist of 100 per cent cuts (*i.e.*, elimination) of existing tariffs for covered products however high or low they may be, with the coverage being the level of ambition, hence less complex than WTO agriculture or non-agricultural market access (NAMA) negotiations. This explains why under RTA negotiations, product coverage and transition periods are the two central parameters of negotiations, as the depth and "formulae" of tariff cut are mostly irrelevant (*i.e.*, being 100 per cent linear cut) contrary to WTO market access negotiations where focus is precisely on these elements, *i.e.*, level of ambition and its effect across products and countries (Table 14). Under RTAs, any adjustment is to be essentially addressed by the degree of coverage and the length of transition period.

Accordingly, the AfCFTA tariff cut would be based on 100 per cent linear cuts[34] in principle. In other words, the depth of tariff cut is 100 per cent (*i.e.*, elimination) and the formula of tariff cut is "linear" in the sense that there is no differentiation in the degree of cuts according to initial tariff rates, so that any tariffs (5 per cent or 30 per cent) would be reduced to 0 per cent (*i.e.*, 100 per cent cut). The objective under AfCFTA, like under any RTA, is tariff elimination as distinct of tariff reduction. So non-linear "formula" approach such as the "Swiss formula" as used in WTO's NAMA negotiations, or linear cut formula other than 100 per cut (*e.g.*, 50 per cent cut), is not relevant as these formulae do not eliminate initial tariffs but only reduce them (with a harmonizing effect in the case of Swiss formula). Rather, the general modality of AfCFTA is the 100 per cent linear cut applied across-the-board to covered products, and combined with various transition arrangements for staging as applied to different products.

Several different categories of treatment are conceivable for different products:

(i) Products completely excluded from liberalization ("excluded");

(ii) Products subject to tariff reduction only and not elimination ("excluded");

(iii) Products subject to liberalization over longer transition period ("covered");

(iv) Products subject to liberalization over shorter transition period ("covered"), and;

(v) Products subject to liberalization without transition period ("covered").

Categories (i) and (ii) are deemed to be excluded from the liberalization, and (iii)–(v) are "covered" products subject to liberalization.[35]

Accordingly, two stages or facets of negotiations can be conceptually distinguished although the two are interconnected and need to be addressed simultaneously in practice. The first stage of the negotiations would be to determine the overall level of ambition, *i.e.*, product coverage; that is to determine how many products and how much trade should be covered or excluded (*e.g.*, 10 per cent of exclusion of tariff lines and/or import value meaning the liberalization coverage of 90 per cent). The second stage would be to determine tariff phase-out arrangements for covered products. The two stages are interlinked as the higher level of coverage may justify, and often associated with, longer transition periods and *vice versa*.

Table 14: Comparison of negotiating modalities under World Trade Organization and regional trade agreements

	Base rate	Product coverage	Formula	Depth of cuts	Transition period
WTO NAMA	Bound MFN	No *a priori* exclusion (100%)	Swiss formula	Reduction (<100%)	10 years for DCs
WTO Agriculture	Bound MFN	No *a priori* exclusion (100%)	Tiered formula	Reduction (<100%)	10 years for DCs
RTA	Applied MFN	Substantially all the trade (<100%)	Across-the-board linear cut	Elimination (100%)	5, 10, 15 years?

Source: WTO (2008), Revised draft modalities for agriculture (TN/AG/W/4/Rev.4), 6 December and Fourth revision of draft modalities for non-agricultural market access (TN/MA/W/103/Rev.3), 6 December.

3.1. DEFINING THE LEVEL OF AMBITION

The two major components of any tariff elimination modalities are (i) the definition of the extent to which different products will be subject to liberalization (*i.e.*, product coverage, or "the level of ambition"), and (ii) the speed at which tariffs applied on those covered products are to be eliminated (*i.e.*, transition periods).[36, 37] The level of product coverage determines first and foremost the effect of the future AfCFTA tariff liberalization while transitional arrangements set out the trajectory, short or long, towards the realization of such a liberalization goal.

These parameters cannot be determined arbitrarily but needed to be informed by a range of factors. The existing trade policy context in which African countries operate informed the AfCFTA discussion on the level of ambition, namely: (i) WTO rules on RTAs; (ii) existing RTAs involving African countries, and; (iii) progress attained in individual RECs.

WTO rules

As different from non-preferential multilateral tariff negotiations under WTO, preferential tariff negotiations towards an FTA aims at eliminating existing tariffs for almost all trade, be it measured by the number of tariff lines or the value of imports covered by the agreement. The level of ambition thus amounts to the question of how many products or how much trade should be covered under the agreement. The issue here is not that of to what extent the existing tariffs are to be reduced but that of for how many products and how much trade tariff should be eliminated and brought down to zero. The traditional discussion on the level of ambition in the RTA context has therefore revolved around the issue of product/trade coverage, for which tariff will be eliminated within a given period of time. These parameters have been driven by the desire of members to achieve a tariff-free trading environment, but also by the applicable WTO rules in this area.

Under GATT Article XXIV on FTAs and customs union, the requirement for a FTA to be WTO-compatible is that "substantially all the trade" be covered (*i.e.* liberalized), and the interpretation of this concept in terms of what percentage of trade/products should be covered exactly has been a matter of persistent contention often in North-South RTAs, most notably ACP-European Union EPAs.[38] Under the latter's context, liberalization of 100 per cent by European Union and at least by 80 per cent for the ACP side was the operational target chosen with the argument being that the average liberalization ratio of 90 per cent should be deemed to meet the "substantially all the trade" requirement as provided under GATT Article XXIV. It may be noted however that there is no consensually agreed definition of this threshold levels within WTO, neither whether this threshold should be applied to tariff lines or import values. This issue remains largely a matter of interpretation by each WTO member.

The AfCFTA being a South-South FTA, theoretically, it does not need to be covered under GATT Article XXIV but may be arguably covered under the (more flexible) Enabling Clause specifically designed for South-South preferential trade arrangements that does not contain any numerical thresholds or requirement as to the level of liberalization. However, there is recent trend whereby large South-South RTAs have been notified and examined under GATT Article XXIV (or both under Enabling Clause and GATT Article XXVI) at the persistence of other WTO Members. This dual application was the case with the Southern Common Market (MERCOSUR) and SADC. Hence, it is expected that the future AfCFTA would be required to meet the conditions of GATT Article XXIV. Regardless of the applicable WTO rules, therefore, it might prove to be desirable that the AfCFTA be justifiable and defendable *a priori* under the stricter rules of GATT Article XXIV.

The "substantially all the trade" requirement of GATT Article XXIV is generally understood to mean liberalization of tariffs applied on some 90 per cent of products/trade over 10 years among the parties. In any event, it was possible to reasonably assume that the development status of African countries, the configuration of AfCFTA being a South-South FTA, and the existence of other precedents, may arguably justify the level of liberalization lower than 90 per cent and transition period longer than 10 years, to a certain extent.

Pre-existing RTAs and RECs

On the other hand, many African countries have already concluded FTAs with external reginal partners such as European Union under EPAs. Given that liberalization with product/trade coverage of around 80 per cent over 15 years has been undertaken by sub-Saharan ACP countries (based on the European Union's interpretation of GATT Article XXIV requirement), this

would in practice set the minimum level of ambition for the AfCFTA liberalization, so that any future AfCFTA should be “EPA-plus”. In other words, AfCFTA parties were expected to offer to other AfCFTA parties market access conditions at least equal to those offered under other extra-regional RTAs such as ACP-European Union EPAs.

At the same time, the objective of AfCFTA being to boost intra-African trade, the level of liberalization higher than this level (80 per cent) is in principle desirable. At the other end of spectrum, the level of liberalization achieved under existing RECs may set the upper limit to the AfCFTA ambition. Many RECs have achieved internal liberalization covering practically 100 per cent of products to a varying degree of implementation while others are yet to reach that level. So AfCFTA parties are expected to offer to other AfCFTA parties market access conditions which come as close as possible to those applicable under pre-existing inter-REC FTAs (*e.g.*, TFTA) or further to RECs themselves (*e.g.*, COMESA, SADC).

From this perspective, and recognizing the hierarchy of different preferential arrangements in a given REC/country, it may be expected that AfCFTA would provide, generally, the degree of liberalization: (i) equal to, or higher than, existing extra-regional FTAs (such as ACP-European Union EPAs and other bilateral FTAs); (ii) equal to, or lower than, existing inter-REC sub-continental FTAs such as TFTA;[39] (iii) equal to, or but more probably, lower than existing more cohesive RECs (*e.g.*, SADC, ECOWAS).

“EPA-plus” liberalization under AfCFTA would ensure that AfCFTA members enjoy market access to another African market at a better condition than extra-regional partners in support of deeper regional integration. This may provide a useful benchmark, as some sub-regional groupings (such as ECOWAS and ESA configurations) have recently concluded their EPA negotiations with European Union, providing a minimum tariff liberalization covering 80 per cent of tariff lines and bilateral imports. Doing otherwise would imply that European Union would enjoy better market access to a AfCFTA member, which is contrary to the objective of AfCFTA to boost intra-African trade. In the example of Table 15, this means moving from column 1 to column 2.

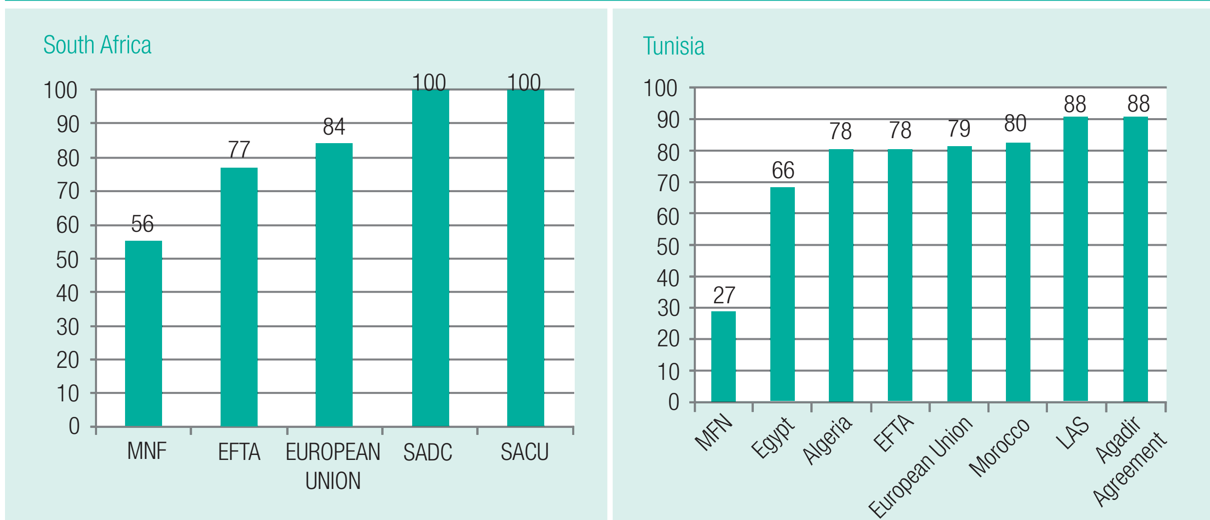
To what extent AfCFTA liberalization could come close to and go beyond the level achieved under the pre-existing inter-REC FTAs (TFTA) (column 3) and come close to RECs (column 4) appears to be critical in determining the overall level of ambition for the future AfCFTA. In particular, TFTA, negotiated recently between COMESA, EAC and SADC with an eye on supporting the continental integration, would form a natural basis for this purpose. However, as noted, AfCFTA would also be built on the principle of “reciprocity” and there is a legitimate case for TFTA members to expect their market access offer to be reciprocated by other REC configurations, and therefore that the extension of TFTA preferences to other REC members be conditional upon their equivalent market access offers.

This may imply that the level of market opening for the AfCFTA would be less than that of TFTA or existing RECs, and that the level of intra-REC and inter-REC integration such as TFTA is one of the key determining factors of the level of liberalization under the AfCFTA. For instance, some RECs have achieved practically 100 per cent of internal liberalization but others are yet

Table 15: Example of hierarchy of preferences in an African Continental Free Trade Area party

	MFN rates	Extra-regional FTA (*e.g.*, EPA)	Inter-REC FTA (*e.g.*, TFTA)	REC
	(1)	(2)	(3)	(4)
	--	Coverage = 80%	Coverage = 85%	Coverage = 100%
Product A	0	0	0	0
Product B	5	0	0	0
Product C	10	0	0	0
Product D	20	20	0	0
Product E	35	35	35	0

Figure 8: The share of duty-free tariff lines by tariff regime, South Africa and Tunisia (per cent)



Source: TRAINTS/WITS.

to reach that level. The members of the former REC would find it easier to extend duty-free treatment to other AfCFTA parties but the members of the latter would find it difficult to go beyond the level achieved in their respective REC. This appears, for instance, to be the case for Tunisia (Figure 8).

In this light, the TFTA negotiating modalities agreed in 2013 set the target for liberalization of 60–85 per cent over a period of 5–8 years, although some TFTA parties may have opted for a higher level of liberalization in their market access offers. So if the maximum TFTA liberalization target of 85 per cent is confirmed, it may in turn constrain AfCFTA parties' ability to go beyond that level in principle by virtue of reciprocity. The issue is how and to what extent AfCFTA could go towards and beyond this level.[40]

The AfCFTA ambition and RECs

AfCFTA negotiations based on reciprocity and MFN principles conducted essentially among parties belonging to different RECs therefore leaves the important question of how to address the cases where internal-REC liberalization is not effective or operational, as the essentially inter-REC nature of AfCFTA negotiations *would not a priori address intra-REC tariff liberalization*. Also, the inability of various RECs to advance intra-REC integration to date despite repeated efforts suggests that the overall level of ambition for AfCFTA liberalization itself would be in large part dependent on the existing level of integration in each REC. Indeed, the application of reciprocity and MFN principles, combined with the hierarchy of preferences, could lead the level of AfCFTA liberalization to converge towards the lowest level of liberalization achieved in individual RECs, thereby potentially giving rise to a "race to the bottom." Pre-empting such an undesired outcome required specific remedies as part of the liberalization modalities as follows:

(i) To institutionalize a sequential and continuous process of progressive and parallel liberalization at RECs and AfCFTA levels so as to achieve a gradually higher level of liberalization both at REC and AfCFTA levels over a long time period ("sequential approach") and/or;

(ii) To set an explicit, sufficiently high numerical target for AfCFTA liberalization, so that all RECs would be required to achieve at least an equivalent level of liberalization, either in advance to or in parallel with AfCFTA liberalization process ("liberalization targets").

(i) Sequential approach

This approach recognizes that the ability of given RECs to independently improve their existing intra-REC liberalization in a short period of time prior to or in parallel with AfCFTA liberalization is limited and not practicable. This eventuality points to the case for devising some sequential and continuous processes of parallel integration efforts both at the levels of individual RECs and AfCFTA, so that an advance

in intra-REC integration could be fed into further liberalization at the AfCFTA level and *vice versa*. In other words, this approach assumes a gradual and progressive liberalization through a built-in agenda for regular review, and continued negotiations for expanding product coverage.

This approach was taken on board in the agreed AfCFTA tariff negotiating Modalities in that the sensitive products and exclusion list products were to be subject to "notification, negotiation and future reviews". The scopes of sensitive and exclusion list products (values for "X" and "Y" in the Modalities) were to remain undetermined *ex ante* but to be determined on a case-by-case basis and subject to notification and (request-offer) negotiations, with the exclusion list products subject to future reviews in 5 years.[41]

It is arguable that the Modalities text adopted in June 2017 therefore recognized the hierarchy of REC preferences and set the preliminary target of AfCFTA liberalization at a conservative level of 90 per cent (without taking into account sensitive products), with the scope of sensitive products and exclusion list products to be negotiated on a continuous and case-by-case basis, including by a review in 5 year-time. How and when exactly the scope of sensitive and exclusion list products were to be determined and negotiated on a case-by-case basis was left undefined. The targeted level of ambition (90 per cent or above) provided flexibilities for those RECs and parties that may have difficulties in achieving a higher level of liberalization.[42]

(ii) Liberalization targets

Another more direct way to remedy such undesired outcome would require that AfCFTA makes an explicit commitment to a higher level of liberalization based on a pre-defined numerical target that goes beyond the lowest common denominator so that those RECs with insufficient internal liberalization would be required to: (i) advance their integration in advance of the AfCFTA liberalization so as to preempt such RTAs from becoming a bottleneck for higher level of AfCFTA liberalization, or; (ii) undertake intra-REC liberalization in conjunction with AfCFTA liberalization by eliminating persistent positive MFN (and preferential) rates.

This appear to be what indeed occurred when AfCFTA parties determined the scope of sensitive products and exclusion list products in December 2018, thereby setting an overall *ex ante* liberalization target of 97 per cent including sensitive products (*i.e.*, 90 per cent to be liberalized in 5 years and additional 7 per cent in 10 years). Given the significantly high level of liberalization targets, certain RECs or AfCFTA parties would necessarily be required to undertake AfCFTA liberalization going beyond their existing intra-REC liberalization. Since this may defy the basic political economy logic of the hierarchy of preferences, whether this could lead to effective implementation needs to be carefully monitored and ascertained.

AfCFTA reduces formally MFN rates irrespective of whether these apply to imports from extra-REC partners without preferential trade arrangements, or from REC partners with preferential trade arrangements (where intra-REC liberalization is not completed with residual non-zero MFN or preferential rates still applicable to certain intra-REC imports). When there remain intra-REC tariffs, these products are expected to be excluded from AfCFTA liberalization consistent with MFN principle. However, it is also possible that AfCFTA liberalization of MFN rates will also eliminate whatever MFN or preferential rates remaining on intra-REC (as well as extra REC) trade, and this may be done on purpose, coordinated within RECs so as to advance internal liberalization in conjunction with AfCFTA, or by accident without purposeful internal coordination as some members of RECs may inadvertently make AfCFTA commitments that go beyond, thus contradict with, their intra-REC tariff commitments. Table 16 illustrates this point.

Product A is the case where the product is covered by REC, hence duty-free for REC partners but attracts an MFN rate of 10 per cent vis-à-vis extra-REC partners. AfCFTA may reduce this MFN rate to zero. This would be relatively easy as product A is already liberalized under REC. This is the straightforward case of REC preferences being extended to all AfCFTA parties on an MFN basis.

Problem arises when REC liberalization is not complete and there remain intra-REC preferential or MFN tariffs on certain products. Two scenarios are possible: (i) AfCFTA liberalization would not address these products, consistent with the logic of the hierarchy of preferences (product B), *i.e.*, AfCFTA liberalization stops where internal REC liberalization stopped, or; (ii) AfCFTA liberalization would also eliminate these remaining tariffs, thereby superseding existing intra-REC FTA (product C).

The both cases are MFN consistent. Normally, the logic of the hierarchy of preference (*i.e.*, the supremacy

Table 16: Example of African Continental Free Trade Area market access commitments relative to Regional Economic Community commitments

Product	Case	MFN rate (%)	REC rate (%)	AfCFTA liberalization	For REC members	Implication	Likely
A	Product is covered under REC	10	0	Duty free in 5 years	Duty free at EIF	AfCFTA liberalizes products already liberalized under REC	Likely
B	Product is NOT covered under REC	10	10	No reduction	No reduction	AfCFTA liberalization stops where intra-REC protection remains	Likely
C	Product is NOT covered under REC	10	10	Duty free in 5 years	Duty free in 5 years	AfCFTA liberalization supersede persistent intra-REC protection	Unlikely but possible

Note: "EIF" refers to entry into force.

of intra-REC liberalization) tells that case B is more likely. This is because REC members would find it in their interest to limit the level of AfCFTA liberalization at most to the level achieved within REC so as not to offer better market access conditions for extra-REC partners. Also, those products for which RECs maintain positive duties tend to be sensitive ones and where liberalization of applied tariffs was found already difficult in the context of past intra-REC liberalization processes.

Case C cannot be excluded and could happen intentionally or inadvertently as noted. Intentionally because some RECs with insufficient internal liberalization as a group (or some members of such RECs individually) may choose to increase the level of intra-REC liberalization in conjunction with AfCFTA liberalization. Inadvertently because, given that REC-FTA members will negotiate individually, if not adequately coordinated with other REC members, some members might offer REC-plus market access offers under AfCFTA. Indeed, some RECs may be more willing to go for this option than others, therefore may choose to use AfCFTA as a catalyst to induce greater intra-REC liberalization on an MFN basis.

The issue is whether those products considered "sensitive" which were excluded from intra-REC liberalization would also be excluded in AfCFTA liberalization with extra-REC partners or newer AfCFTA liberalization would supersede these constraints and liberalize some of sensitive products so defined under REC, and if the latter is the case, to what extent. In this respect, the fact that the agreed AfCFTA modalities provided effective product coverage of 97 per cent suggests that additional REC-plus liberalization is more likely to indeed happen where internal REC liberalization is lower than 97 per cent.

Ex ante definition of product coverage

All in all, prior to the agreed Modalities text, political economy of intra-African regional integration suggested that the level of liberalization that could be realistically expected *ex ante* of the AfCFTA was between 80 per cent (as achieved under ACP-European Union EPAs) and 85 per cent (as provided in the TFTA tariff negotiations modalities). The level of liberalization closer to 90 per cent (to meet a prima facie requirement of GATT Article XXIV) was desirable from the perspectives both of the WTO compatibility test and the AfCFTA objective of boosting intra-African trade, even if WTO rules would prove to be permissive of the level somewhat lower than 90 per cent. This consideration places the expected level of ambition in the range of 85–90 per cent.

This appears to corroborate with the fact that the agreed AfCFTA modalities initially set the product coverage of 90 per cent product for liberalization without *ex ante* definition of sensitive products. A key policy question was whether AfCFTA parties would be ready to move towards and beyond 90 per cent.

At an early stage of modalities negotiations, therefore, sequential approach was implicit in that RECs and AfCFTA parities were provided with the flexibilities of determining sensitive products and the exclusion list products not *ex ante*, to be negotiated on a case-by-case and subject to review over a longer time which would have allowed them to advance intra-REC liberalization in parallel with AfCFTA liberalization process if needed.

This approach changed when the modalities' approach shifted to that of determining *ex ante* the scope of sensitive products and exclusion list products. Since this implied that the level of ambition was to go certainly beyond 90 per cent (90 per cent plus "X" (7) per cent of sensitive products), assumption also changed in practice that certain RECs would need to undertake additional REC-plus liberalization in advance or in conjunction with AfCFTA liberalization process to go beyond 90 per cent and reach 97 per cent. As noted, since this may go against the incentives embedded in intra-African regional integration processes, and incur intra-REC adjustment, the issue of implementation could arise.

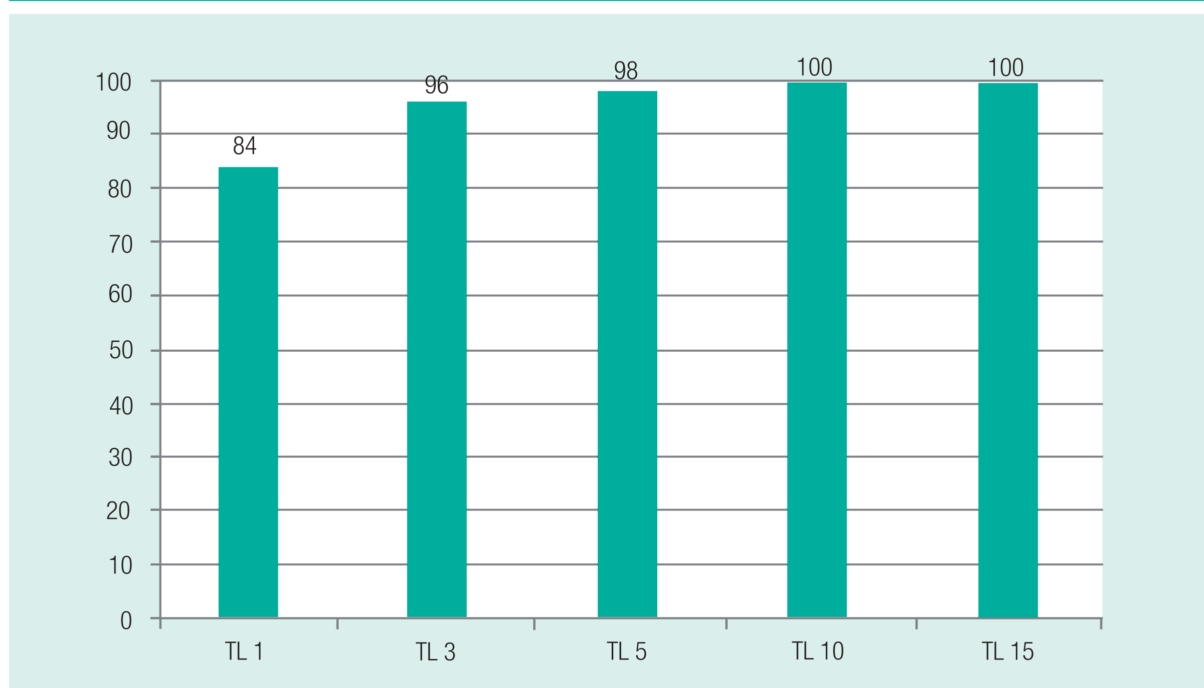
Conditions for product exclusions: Double-qualification rule

An *ex ante* determination of sensitive products and the exclusion list products underscored the importance of ascertaining the expected trade effect of product exclusions. If the AfCFTA ambition is set at 90-plus per cent, determining adequate conditions for excluded products has become critically important in ensuring that these legitimate flexibilities to cater for AfCFTA liberalization would not defeat the overall objective of the AfCFTA to boost intra-African trade. This discussion has led to a higher liberalization target of 97 per cent, and, more importantly, the determination of the scope of the exclusion list products of 3 per cent in tariff line terms, subject to the import value limit of 10 per cent.

In this light, intra-African trade is characterized by a high degree of concentration and exclusion of a few products may result in exclusion of disproportionately large import volumes from market opening. This has created the presumption in favour of a higher product coverage.

Preliminary research finds that intra-African imports take place in a limited number of products. For an African country on average, intra-African imports are recorded in 2078 out of the total HS6 tariff lines of 5205, and dutiable imports are registered in 808 tariff lines, or 16 per cent of the total tariff lines.[43] Generally, 1–15 per cent of tariff lines represent a disproportionately large share of dutiable import values (Figure 9). For a country on average, 10 per cent of tariff lines can account for virtually 100 per cent of intra-African dutiable imports. Even 3 per cent of tariff lines can amount to 96 per cent of dutiable imports, and 1 per cent of tariff lines, 84 per cent of import value.

Figure 9: Proportion of dutiable intra-African imports represented by excluded tariff lines (average, per cent)



Source: TRAINS/WITS.
Note: Simple average of reported individual AfCFTA parties. 2015 or latest years for missing data.

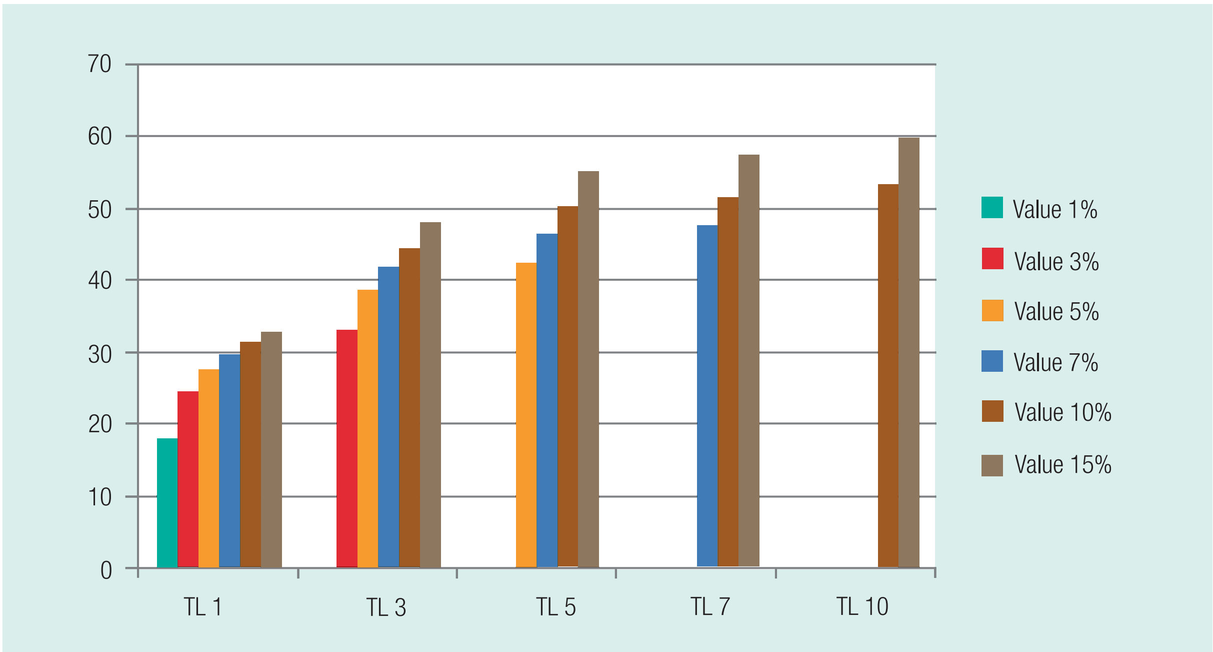
It is therefore clear that the tariff line limit alone cannot effectively discipline product exclusion, as even 1 or 3 per cent of tariff lines could represent a large import values, up to virtually 100 per cent of dutiable imports. This has pointed to the case for complementing the tariff line limit with the import value limit, so that both conditions need to be met cumulatively.

In this regard, the agreed AfCFTA Modalities text of June 2017 did not foresee setting import value limit as a condition for the exclusion list products.[44] It was important therefore to ascertain the adequacy or otherwise of setting an additional requirement on the minimum trade coverage (*i.e.*, import value) in addition to the minimum tariff line coverage for the exclusion list products. Such a requirement – dubbed a "double qualification" rule both in terms of tariff lines and import value – was found in principle necessary in assuring commercially meaningful liberalization, as the minimum product coverage in tariff line terms alone does not guarantee the same coverage of import value because bilateral imports of a given country from other AfCFTA partners may be concentrated on a few products.

Determining the adequate levels for both tariff line and import value limits has therefore proved to be important in setting effective disciplines on the exclusion list products which is determinant of the effect of future AfCFTA liberalization.[45] Negotiations informed by the simulation of the effect of different combination of threshold levels has led to the identification of the import value limit of 10 per cent of intra-African trade for 3 per cent of the exclusion list products as agreed by AMOT in December 2018.[46] Preliminary estimates suggest that for an average country, the combination of tariff line and import value limits would protect in the order of 45 per cent of tariff revenue for an average African country (Figure 10).

The import value limit is particularly effective in limiting the exclusion of highly-traded products generating high government revenues. The value limit at a very low threshold level may prove to be overly restrictive, as given the important level of import concentration of many countries, low threshold may exclude any possibility of product exclusion of traded products. On the other hand, when those products with small import values with high tariff protection are selected, a given level of import value limit (*e.g.*, 10 per cent) would lead to the exclusion of a larger number of tariff lines. This should be controlled by the limit on the number of tariff lines. Tariff line limit is effective at lower threshold levels and becomes less so with higher thresholds.

Figure 10: Estimated tariff revenues protected by different thresholds for tariff lines and import value limits
(average, per cent)



Source: TRAINS/WITS.
Note: Simple average of reported individual AfCFTA parties. 2015 or latest years for missing data.

Any combination of tariff line and import value limits for double-qualification is expected to incur highly heterogeneous effect to individual countries in terms of number of products excluded or tariff revenues that may be protected (Figure 11).

For those countries that have relatively open trade regime, a tariff line limit of 3 per cent may be large enough to allow exclusion of all remaining dutiable tariff lines as total dutiable imports may well be lower than 10 per cent of total intra-African imports. For those countries with relatively high protection with a number of dutiable tariff lines, a tariff line limit of 3 per cent will pose binding constraint as with so many tariff lines dutiable with little import value, the 10 per cent value limit would otherwise allow for an exclusion of a large number of tariff lines, which is now capped at 3 per cent of tariff lines.

Accordingly, the ability of countries to exclude products from liberalization would significantly vary. Some countries may face particular difficulty in making effective use of the flexibility to exclude products from liberalization while others may be able to exclude still all dutiable tariff lines. Such specific concern over certain products for given trading partners would need to be addressed on a case-by-case basis, including in the request-and-offer negotiations.

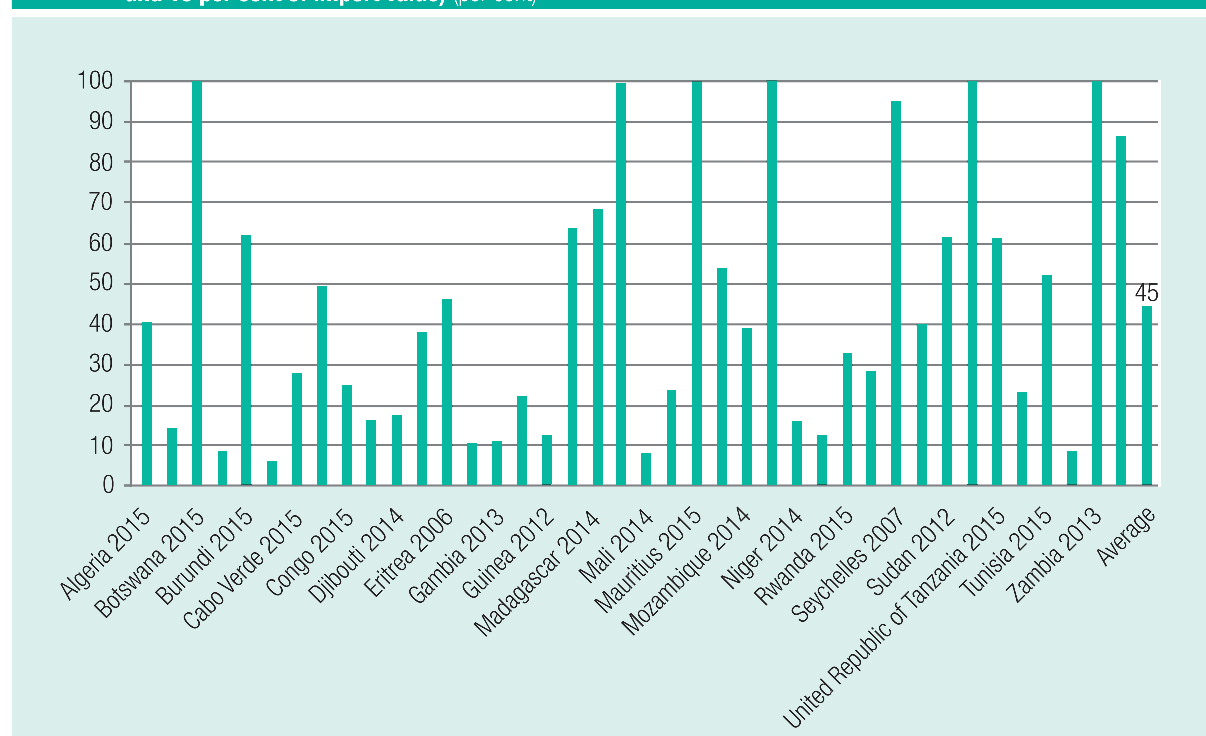
3.2. DEFINING LIBERALIZATION APPROACHES AND TRANSITION ARRANGEMENTS

Once the scope of liberalization/exclusion is determined, the second stage of negotiations is expected to focus on determining the speed of liberalization for covered products. Different RTAs have used different approaches on tariff liberalization and transitional arrangements. Key parameters of transition arrangements for tariff elimination include the following:

(i) The number of distinct transition periods (*i.e.*, whether uniform period applies to all products or different periods apply to different products);

(ii) The duration of transition periods (*e.g.*, 5 years or 10 years);

Figure 11: Estimated tariff revenues protected by the exclusion list products (3 per cent of tariff lines and 10 per cent of import value) (per cent)



Source: TRAINS/WITS.
Note: Simple average of reported individual AfCFTA parties. 2015 or latest years for missing data.

(iii) Annual staging arrangements (*e.g.*, equal or non-equal annual reduction, grace periods and standstill).

In case more than one period is applicable, additional parameters are relevant and include:

(iv) The number of products to be assigned to different periods and the criteria thereof, and;

(v) The number and levels for tariff bands if different periods are based on initial base rates.

The agreed AfCFTA Modalities in principle applied two different periods of 5 years for 90 per cent of products generally, and of 10 years for 7 per cent of sensitive products, and an exclusion list of 3 per cent for non-liberalization (10 years and 13 years respectively for LDCs) with equal annual reduction. The selection of products to different categories (*i.e.*, general, sensitive and exclusion list products) are left at the discretion of each party. The particular design of liberalization approach was informed by applicable WTO rules and drew largely on existing REC experiences.

As to the implementation period of RTAs, under GATT Article XXIV and its Understanding, the rule of thumb is that RTAs should be established within 10 years although there are numerous real-life cases of exception to this rule, and to what extent developing countries can deviate from this rules has indeed been a key contentious issue in the North-South RTA context, along with the question of product coverage ("substantially all the trade" requirement) as noted above.[47]

Several options for tariff elimination approaches are conceivable and indeed have been practiced:

(a) Tariff elimination without transition period;

(b) Tariff elimination over a uniform transition period for all products (*e.g.*, COMESA);

(c) Tariff elimination over modulated transition periods for different product categories (*e.g.*, SADC), and;

(d) Tariff elimination over modulated transition periods for different product categories according to initial base rates (*e.g.*, ASEAN).

(a) Tariff elimination without transition period

Among these options, liberalization without transition period is clearly unrealistic if it is to be applied across-the-board to all products with different tariff rates. However, a certain category of tariffs can be considered for immediate elimination at the entry into force of the agreement, particularly already very low rates, or "nuisance tariffs", as may be defined as tariffs less than 3–6 per cent.[48] This option was considered at an early stage of the modalities negotiations.

(b) Tariff elimination over a uniform transition period for all products

In its simplest form, all products can be subject to equal annual reduction of X per cent over Y years. In the example of Table 17, equal annual reduction of 20 per cent applies to all tariffs over 5 years.[49] The approach, similar to the approach followed by COMESA internal liberalization programme, will enable a liberalization of all covered products over a uniform transition period (*e.g.*, 5 years).[50]

Since the length of the implementation period is uniform for all products, this means the equal pace of reduction for all ranges of tariffs. Whatever the level of initial tariffs, all tariffs are reduced by 20 per cent annually with all tariffs converging to zero rates at year 5, and the pace of reduction is identical across all rates (Table 18 and Figure 12).

The approach will have the advantage of negotiating ease, as well as implementing simplicity and flexibility, as all covered products are treated in thes same manner. On the other hand, the approach has the disadvantage of being not amenable to addressing fully different sensitivity of different tariff levels. For instance, while equal annual reduction over a period of 5 years would require an annual reduction by 20 per cent of base rates (table 18), this means only 2

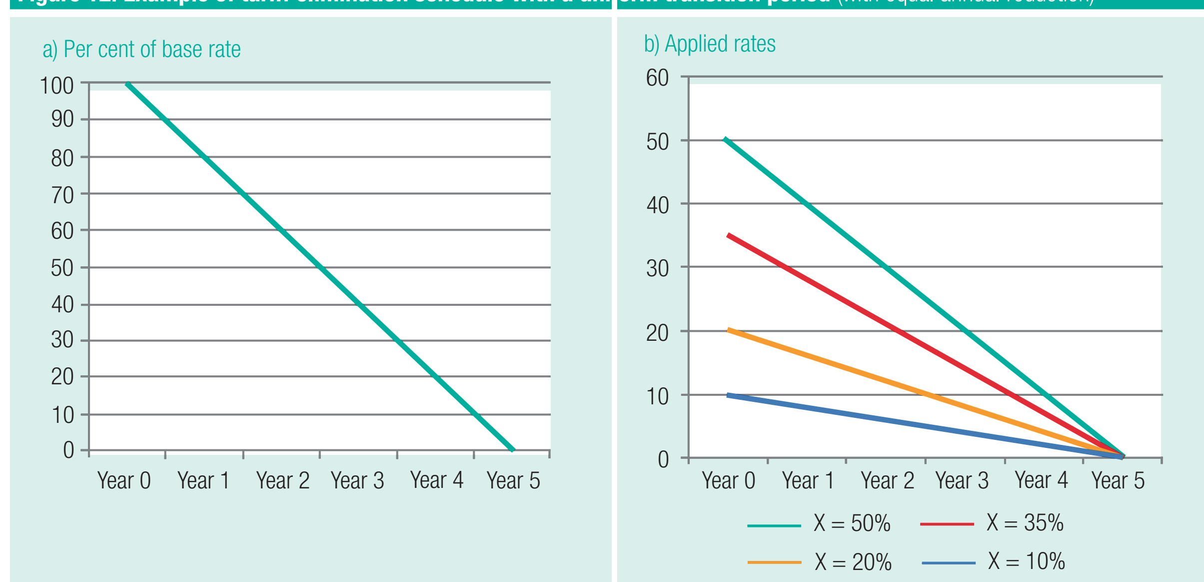
Table 17: Option (b) – Tariff elimination with uniform transition period (with equal annual reduction) (per cent of base rate)[50]

All covered products	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
TP = 5 years	100	80	60	40	20	0

Table 18: Example of tariff elimination schedule with a uniform transition period (with equal annual reduction) (Applied rates)

Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Annual cut (percentage points)	Annual cut (% of base)
50	40	30	20	10	0	10	20
35	28	21	14	7	0	7	20
20	16	12	8	4	0	4	20
10	8	6	4	2	0	2	20
5	4	3	2	1	0	1	20

Figure 12. Example of tariff elimination schedule with a uniform transition period (with equal annual reduction)



percentage points for an initial tariff of 10 per cent but 10 percentage points for an initial tariff of 50 per cent, with greater adjustment challenges for the latter products. If a longer uniform period is set for all products (*e.g.*, 10 years), limited control may be exercised over the paces of liberalization for different products.

(c) Tariff elimination over modulated transition periods for different product categories

One major approach that aims to address import sensitivity of different tariff levels, particularly higher tariffs, is to set different staging arrangements, whether it is based on the initial base rates or any other criteria, so that the higher the tariffs, the longer the transition period. Setting different tariff bands would make sense only when the applied staging is different across those bands. The example in Table 19 assigns different periods (of 3–10 years) for different tariff bands, with equal annual reduction where all tariff bands are subject to 5 percentage point reduction (hence parallel lines in Figure 13 (b)) but this implies slower pace of reduction for higher tariffs (*e.g.*, 10 per cent annually) than lower tariffs (50 per cent annually).

Extending this differentiation of transition periods according to different tariff bands, assigning even smaller absolute annual reduction to higher tariff bands, would allow for even more lenient pace of tariff reduction for higher tariffs. In the example shown in table 20, annual reduction in absolute terms and relative terms are both

Table 19: Example (1) of tariff elimination over modulated transition periods for different product categories (applied rates)

X = base rate	Y0	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Annual cut (percentage points)	Annual cut (% of base)
X ≥ 35%	50	45	40	35	30	25	20	15	10	5	0	5	10
20% ≤ X < 35%	35	30	25	20	15	10	5	0	0	0	0	5	14
10% ≤ X < 20%	20	15	10	5	0	0	0	0	0	0	0	5	25
5% < X < 10%	10	5	0	0	0	0	0	0	0	0	0	5	50
X ≤ 5%	5	0	0	0	0	0	0	0	0	0	0	5	100

Figure 13. Example (1) of tariff elimination over modulated transition periods for different product categories

a) Per cent of base rate

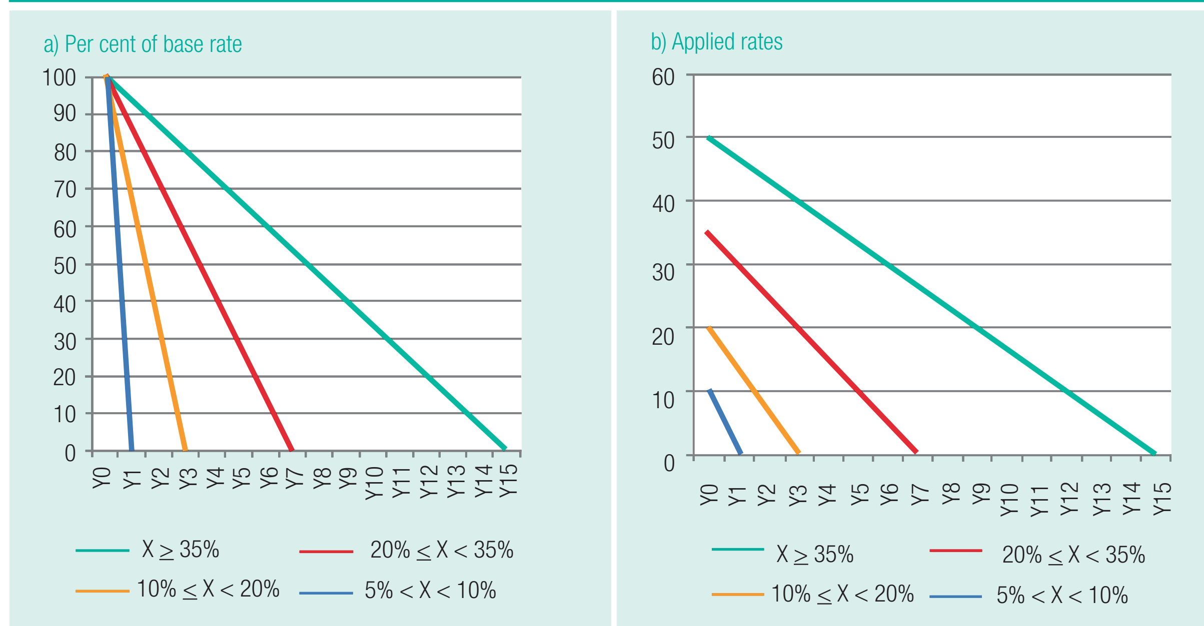
b) Applied rates

X ≥ 35% | 20% ≤ X < 35% | 10% ≤ X < 20% | 5% ≤ X < 10%

Table 20: Example (2) of tariff elimination over modulated transition periods for different product categories (Applied rates)

X = base rate	Y0	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12	Y13	Y14	Y15	Annual cut (percentage points)	Annual cut (% of base)
X ≥ 35%	50	47	43	40	37	33	30	27	23	20	17	13	10	7	3	0	3	7
20% ≤ X < 35%	35	30	25	20	15	10	5	0	0	0	0	0	0	0	0	0	5	14
10% ≤ X < 20%	20	13	7	0	0	0	0	0	0	0	0	0	0	0	0	0	7	33
5% < X < 10%	10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	10	100
X ≤ 5%	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5	100

Figure 14. Example (2) of tariff elimination over modulated transition periods for different product categories



lower for higher tariff bands, implying disproportionately slower reduction for higher rates (Figure 14).

Assigning multiple transition periods to different product categories (*i.e.*, options (c) and (d) above) will allow for addressing different sensitivity of different products (Table 21). **Option (c)**, which is similar to the approach followed by SADC, leaves each country the flexibility to assign particular products to different product categories based on its own determination of their sensitivity, hence the adequate pace of liberalization (while option (d) categorizes products solely on the basis of the level of initial base rates, as noted below). For instance, this may prove to be advantageous, as countries may find it in their interest to assign longer period for those products with relatively low initial tariffs but large import value, generating large fiscal revenue. The option thus has the advantage of enabling an effective, balanced and flexible implementation of progressive liberalization. On the other hand, if product categorization becomes too detailed and too many different treatments are assigned, negotiating these parameters might prove to be onerous.

Since, under option (c), each country will retain the flexibility to assign different products to different product categories, it would be necessary to set a requirement on maximum or minimum numbers of products that could be assigned to each product category (Table 22).

The agreed AfCFTA Modalities are essentially based on this approach while not adopting category A (immediate liberalization) and B (short transition period of 3 years), with the coverage for category C being 90

Table 21: Option (c) – Tariff elimination over modulated transition periods for different product categories (with equal annual reduction) (per cent of base rate)

Product categories	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
Category D	100.0	87.5	75.0	62.5	50.0	37.5	25.0	12.5	0.0
Category C	100.0	80.0	60.0	40.0	20.0	0.0			
Category B	100.0	67.0	33.0	0.0					
Category A	100.0	0.0							

Table 22: Option (c) – Threshold levels for each product category

Product categories	Product coverage
Category A: Immediate liberalization (TP = 0)	At least x% of tariff lines
Category B: TP = 3 years	At least x + α% of tariff lines
Category C: TP = 5 years	At least x + α + β% of tariff lines
Category D: TP = 8 years	At least x + α + β + γ% of tariff lines
Category E: Excluded	At most 100% - (x + α + β + γ)% of tariff lines

per cent, category D being "sensitive products" of 7 per cent with the duration of 10 years and Category E being "exclusion list products" of 3 per cent.

(d) Tariff elimination over modulated transition periods for different product categories according to initial base rates

Under option (d), product categorization is based on initial base tariffs, and products classified in different tariff bands will be subject to different transition periods, as pursued in the ASEAN context (Table 23).

The approach has the advantage of predictability and certainty of implementation as the assignment of products to different transition period is done automatically on the basis of base rates. As far as different tariff bands and the length of respective transition periods are determined, no further negotiation would be needed. However, the approach may not leave sufficient flexibility for individual countries to assign different products to different categories. Additionally, the pace of liberalization will be largely determined by the initial tariff structure of individual countries, thus may be significantly different across countries (*i.e.*, countries with lower initial average tariffs would achieve a faster liberalization for a greater number of products). Furthermore, if too detailed, negotiations may prove to be onerous in determining different parameters of the modalities (*e.g.*, the number of tariff bands, threshold levels).

Duration of transition periods and annual reduction

On the issue of staging, all options (b) to (d) above presumed the equal annual reduction of base rates, as this is the most straightforward and least complex approach to negotiate and implement.[51] But countries may be allowed to move faster if they so wish (by way of "variable geometry"). Further, it may be worth considering leaving the option of allowing parties to adopt any other staging arrangements so long as tariffs are eliminated within the prescribed, relatively short, transition period for the sake of simplicity and flexibility.

Under equal annual reduction approach, the speed of annual reduction is basically determined by the length of implementation period, as the longer the period, the smaller the annual cuts, hence the slower the liberalization. Under existing African RECs, transition periods of 5–8 years have been commonly used including in COMESA, SADC, EAC and ECOWAS.

Table 23: Option (d) – Tariff elimination over modulated transition periods for different product categories according to initial base rates (with equal annual reduction) (per cent of base rate)

X = Base rate	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
X ≥ 25%	100.0	87.5	75.0	62.5	50.0	37.5	25.0	12.5	0.0
15% ≤ X < 25%	100.0	80.0	60.0	40.0	20.0	0.0			
5% ≤ X < 15%	100.0	67.0	33.0	0.0					
X < 5%	100.0	0.0							

- COMESA's liberalization programme was based on liberalization over 5-year transition period applicable for all products without distinction with equal annual reduction, combined with user-friendly safeguards and flexible rules of origin.
- SADC's liberalization programme was based on product categorization into four baskets with each subject to: (i) immediate liberalization upon entry into force; (ii) liberalization over 8 years; (iii) liberalization over 12 years (limited to 15 per cent of intra-SADC trade), and; (iv) no liberalization.
- EAC's internal liberalization was conducted over a period of 5 years.
- TFTA negotiating modalities set the target of a liberalization between 60 and 85 per cent, with 15 per cent of tariff lines allowed as exclusions from liberalization (and subject to further negotiations), and a tariff liberalization period of between 5 to 8 years.

Elimination over a certain period of time with equal annual reduction is a common approach to tariff reduction used in various trade agreements, either under RTAs or WTO. For instance, under the Doha Round negotiations on NAMA, implementation periods of 5 years for developed countries, and 10 years for developing countries, were allowed in reducing base rates to new lower rates resulting from the application of a Swiss formula, and the reduction is based on equal annual reduction. In the case of RTAs, since reduction continues until tariffs are eliminated, progressive reduction is all the more important in mitigating the impact of liberalization.

The use of non-equal annual reduction, combined with grace period and stand-still arrangements, will provide an infinite variety of tariff reduction patterns. The two panels in Figure 15 shows examples of some extreme cases of non-equal annual tariff reduction, drawn from the tariff elimination schedules of the United States under the original TPP Agreement. They seem to be aimed at addressing specific sensitivities of certain products. This level of complexities has proved to be irrelevant in the AfCFTA context and was not considered. AfCFTA Modalities provided for equal annual reduction over the applicable periods.

3.3. SPECIAL AND DIFFERENTIAL TREATMENT (SDT)

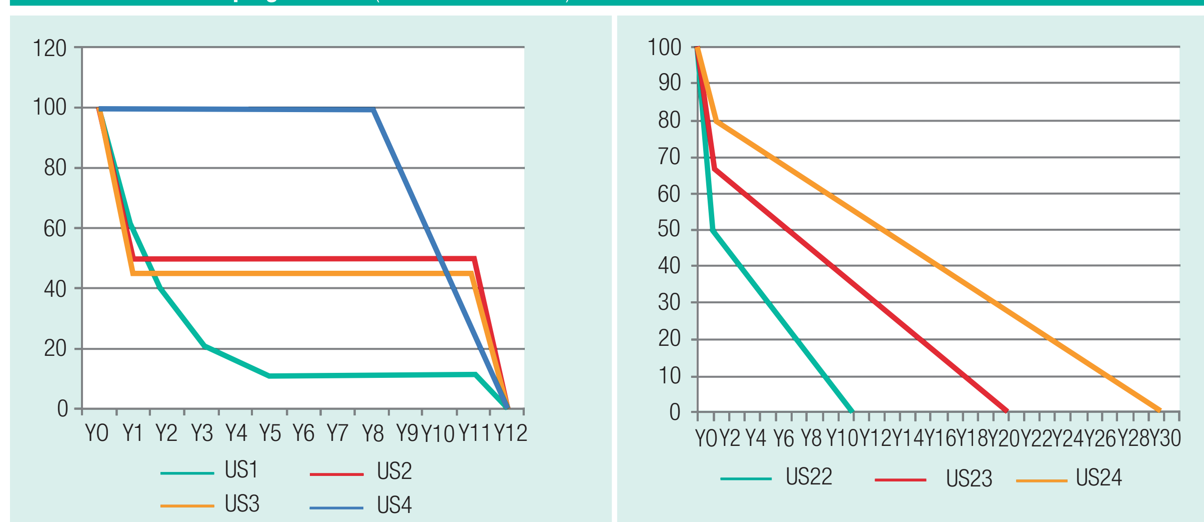
Another important horizontal issue is to define differentiated (more lenient) targets for product coverage and/or transition periods as SDT for a selected group of weaker and more vulnerable members. As SDT, consideration may be given to setting separate coverage and tariff phase-out arrangements for some AfCFTA parties requiring special considerations, such as LDCs and other weak and vulnerable economies (*e.g.*, countries with high tariff structure, highly dependent on tariff revenue or post-conflict countries).

At the level of determining product coverage, such SDT may consist of allowing those countries concerned a narrower product coverage, *i.e.*, greater product exclusion, or lesser extent of tariff reduction for covered products. This is the traditional reasoning behind the allowances provided under the Enabling Clause where South-South RTAs and preferential trade arrangements are authorized without no explicit conditions relating to the level of coverage and tariff reduction so as to provide developing countries with greater flexibilities in designing the terms of their liberalization commitments and facilitate adjustment. Already, various South-South RTAs pursued with limited product coverage and tariff reduction (not elimination) for developing countries.

At the level of transition arrangements, slower and softer liberalization approaches could be considered as a form of SDT by the combined use of longer implementation periods, grace period, stand-still, tariff bands and tariff reduction arrangements. Again, such an allowance is expected to mitigate and attenuate adjustment challenges resulting from market opening. Under North-South RTAs, longer transition period often applied to developing countries, going beyond a benchmark of 10 years to a various degree. SDT could be constructed variously with different combinations of specific parameters of tariff elimination.

Table 24 provides an example of SDT provided specifically for three less-advanced ASEAN members under the Republic of Korea-ASEAN FTA. It allows, among others, for standstill treatment of low tariffs and other tariffs in the course of implementation period; the flexibility to maintain tariffs lower than 5 per cent; and disaggregated tariff bands that allows for reduction schedules tailored to specific sensitivities of each band.

Figure 15. Tariff elimination schedule of the United States for certain products under the original Trans-Pacific Partnership Agreement (Per cent of base rate)



Source: United States Trade Representative, General notes: Tariff schedule of the United States.[52]

Table 24: Tariff liberalization schedule for Cambodia, Lao People's Democratic Republic and Myanmar under the Republic of Korea–ASEAN free trade agreeement

X = base rate (applied MFN rate)	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Y11	Y12
X ≥ 60%	60	50	40	30	30	20	20	20	10	10	10	0
45% ≤ X < 60%	45	40	35	25	25	15	15	15	10	10	10	0
35% ≤ X < 45%	35	30	30	20	20	15	15	15	5	5	5	0
30% ≤ X < 35%	30	30	25	20	20	10	10	10	5	5	5	0
25% ≤ X < 30%	25	25	20	20	20	10	10	10	5	5	5	0
20% ≤ X < 25%	20	20	15	15	15	10	10	10	0-5	0-5	0-5	0
15 ≤ X < 20%	15	15	15	10	10	5	5	5	0-5	0-5	0-5	0
10% ≤ X < 15%	10	10	10	8	8	5	5	5	0-5	0-5	0-5	0
7% ≤ X < 10%	7	7	7	7	7	5	5	5	0-5	0-5	0-5	0
5% ≤ X < 7%	5	5	5	5	5	5	5	5	0-5	0-5	0-5	0
X < 5%	Standstill											0

Note: The Republic of Korea-ASEAN FTA contain three different tariff elimination schedules: one for Korea and ASEAN 6, one for specifically for Viet Nam and the third one for Cambodia, Lao People's Democratic Republic and Myanmar.

AfCFTA raised a novel question of what type of SDT is warranted in an RTA composed of developing country members essentially at a similar level of development. The issue of SDT has proved to be highly complex and sensitive in the AfCFTA negotiations. The question pertained to what form and level of differentiated treatment is warranted for sub-set of AfCFTA membership whereas all members are developing countries two thirds of which (33) are LDCs. AfCFTA represents essentially an agreement among "equal" partners of developing countries where the degree of asymmetry is less pronounced than

in multilateral context. It was argued that the degree of differentiation in treatment should be limited in degree and in application (eligibility). Otherwise, an excessive level of flexibilities accorded to a large number of AfCFTA membership could defeat the overarching objective of boosting intra-African trade.

The question pertaining to the eligibility to the SDT and its practical application has proved to be particularly challenging. For instance, if LDCs are to be provided with SDT, they already number 33 out of 55 AfCFTA parties. This seems to have foreclosed the possibility of SDT for other non-LDCs that may be in special needs, such as small and vulnerable economies, landlocked countries or post-conflict countries. The only exception granted (not necessarily in the form of SDT) from the general level of ambition (of 90 per cent) was for special modalities agreed for the so-called "G7" countries that was granted a greater degree of flexibilities in tariff eliminating schedule.[53]

Hence, SDT in AfCFTA tariff negotiating modalities was essentially limited to longer transition periods for LDCs of 10 years in general and of 13 years for sensitive products. No differentiation was introduced in terms of product coverage. The coverage of 90 per cent with sensitive products of 7 per cent and the exclusion list products of 3 per cent is common to both LDCs and non-LDCs.

Furthermore, the practicability of any differentiated treatment of LDCs arose in regard to those LDCs that are members of customs union with operational common external tariffs shared with non-LDC members which would undertake liberalization commitment as one entity. This situation concerned Lesotho in SACU; United Republic of Tanzania, Uganda, Rwanda and Burundi in EAC, and; 12 out of 15 members of ECOWAS. One option to address the issue was to define criteria whereby a given customs union may be treated as LDCs, such as that the majority of the membership are LDCs. This approach confronted the opposition of those countries that believed that it would not appropriate to treat some large members of customs union in question (*e.g.*, South Africa in SACU, Nigeria in ECOWAS) as LDCs hence subject to slower liberalization over longer transition periods.

Another option was not to apply any SDT to customs unions by treating the distribution of adjustment costs from tariff liberalization essentially as customs unions' internal matters, so that adequate internal adjustment mechanism, such as compensatory revenue sharing mechanism in favour of LDC members, might be put in place to address possible adverse effect of faster tariff liberalization for LDC members. For example, this was deemed to be practicable in SACU.

Yet another possibility is to address on a case-by-case (product-by-product) basis any significant sensitivities arising from non-application of SDT for some LDCs in customs unions (possibly in request-and-offer negotiations) so that liberalization of some particularly import-sensitive products could be deferred for the customs union in question for an extended duration of time (*e.g.*, 13 years instead of 10) subject to negotiations. Since SDT under AfCFTA Modalities is limited only to transition periods, the effect of product-specific adjustment is limited to deferral of tariff elimination schedules by 3-5 years and might prove to be amenable for some negotiated solutions.

CONCLUSIONS

Tariff elimination for substantially all the trade to boost intra-African trade is the single most important outcome of the AfCFTA negotiations. Negotiations for AfCFTA tariff negotiations modalities were critically important in defining the future roadmap and shape of trade liberalization in Africa and the effectiveness of AfCFTA in creating commercially meaningful market opening. This is why the initial negotiations centred on the development of tariff negotiating modalities to set out the roadmaps towards the preparation of initial tariff offers and subsequent request-and-offer negotiations to finalize the schedules of tariff concessions by all parties.

The modalities needed to effectively address specific trade and trade policy conditions prevalent in the continent. Different degree of market integration across RECs, and individual countries' intra-African trade and protection patterns, would determine the ease with which the parties could engage in market opening under the AfCFTA, and conditioned the level of liberalization targets that may be considered on a preliminary basis. Calibrating adequate approaches and parameters of liberalization in a manner that would both meet the ambition of AfCFTA to boost intra-African trade and attend to the specific policy needs arising from existing regional and sub-regional integration processes was the key challenge.

The foregoing discussion has suggested that AfCFTA is in principle about inter-REC liberalization. This suggests that liberalization would address MFN rates applied essentially to inter-REC trade. Since intra-REC negotiations are *a priori* excluded, this implies that AfCFTA negotiations would be essentially conducted among 28 parties, maintaining some 190 bilateral pairs with each having on average some 13.6 negotiating partners. Owing to the difference in size of individual RECs and the degree of overlapping membership, there is strong asymmetry in the number of negotiating partners faced by each party.

Existing RECs, TFTA and extra-regional RATs such as EPAs, and WTO rules and practices, were largely determinant of liberalization target and approaches. In view of existing market access commitments and applicable WTO rules, the possible level of ambition was expected to be in the range of 85–90 per cent. This may be seen as largely reflected in the general level of ambition set at 90 per cent (without taking into account sensitive products) over 5 years. A reasonably ambitious approach taken in terms of product coverage and transition periods, with the limited scope and applicability of SDT, was largely motivated by the overarching objective of boosting intra-African trade.

The degree of AfCFTA market opening was seen to be conditional upon the level of liberalization achieved in individual RECs given the natural hierarchy of preferences expected of cascading regional integration processes. This raises the important question of how to deal with the cases where internal-REC liberalization is not effective or operational, as the overall AfCFTA level of ambition may be constrained by the level of liberalization achieved by individual RECs.

One remedy to address this eventuality was to institute a credible process of continued monitoring, review and follow-up negotiation processes, so that parallel integration processes at REC and AfCFTA levels could be coordinated and the level of liberalization gradually increased at both levels over time. This approach was reflected in the provision according to which the sensitive products and exclusion list products were not to be determined *ex ante* but be subject to "notification, negotiation and future reviews" so that the number of excluded products will be reduced in the longer run.

The other remedy was to set *ex ante* explicit and credible higher liberalization targets so as to induce additional intra-REC liberalization prior to or in parallel with AfCFTA liberalization. This was the effect of ex ante determination of the scope of sensitive and exclusion list products, which in practice meant the setting of the liberalization target at 97 per cent together with sensitive products. This level of ambition would certainly require some RECs to improve their existing level of integration in conjunction with AfCFTA liberalization.

In the hindsight, it was significant that the AfCFTA parties agreed to a liberalization target of as ambitious as 97 per cent tariff line coverage. The higher level of ambition was essentially motivated by the desire to achieve effective liberalization as it became clear that, due to concentration of intra-African trade on a few products, exclusion of a handful of tariff lines would protect the bulk of intra-African imports, thereby nullifying the AfCFTA liberalization objectives. The "double qualification" rule for the exclusion list products (3 per cent) was therefore aimed at effectively limiting the scope of exclusion by setting a cap on excludable import value (10 per cent).

Several challenges may arise going forward, however, in effectively operationalizing the Modalities and prepare initial tariff offers towards effective market opening under the AfCFTA:

- First, this high level of ambition might defy the basic political economy logic of preferential trade liberalization and intra-African regional integration processes by requiring some RECs to raise their level of internal liberalization under REC thereby causing important internal adjustment challenges. This may raise implementation challenges for those RECs with insufficient level of integration;
- Second, preparation of initial tariff schedules (tariff offers) would require substantial work, including technical analysis, stakeholder consultations as well as intra-REC coordination on a product-by-product basis. The definition of market access offers, particularly the selection of the exclusion list products, remains critically important in adequately controlling the possible effect of AfCFTA liberalization;
- Third, the "double-qualification" rule for the exclusion list products would also raise an important technical issue relating to the measurement of import values and effectively monitoring the compliance to the Modalities requirements. Whether import values should include preferential imports in addition to MFN imports need to be ascertained. This is important as the measurement of import values would strongly affect the ability of parties to exclude certain products. The challenge would also be compounded by general data paucity in disaggregated bilateral product-specific trade data;
- Fourth, the effect of product exclusion is expected to be highly heterogeneous across countries depending on their tariff and trade profiles. The ability of countries to exclude products would significantly vary. Some countries may face particular difficulty in making effective use of the flexibility to exclude products from liberalization while others may end up excluding all dutiable tariff lines. Such specific concern may need to be addressed on a case-by-case basis.

Request-and-offer negotiations that may be engaged bilaterally following the preparation of initial tariff offers would be based on reciprocity and conducted between those parties among 28 negotiating pairs having substantial trade interests. Concluding the post-modalities phase of AfCFTA market access negotiations, this process would prove to be highly complex and challenging as commercial interests may acutely differ across countries. Intra-African "mutilateralization" of resulting tariff elimination commitments need to be assured through the application of MFN principle.

The generally low level of development in the continent and the relative prevalence of LDCs, as well as the practical difficulty in operationalizing SDT in favour of LDCs in case they are parties to customs unions sharing common external tariffs with non-LDCs, have led the parties to opt for a restrictive approach to SDT, limiting SDT essentially to the length of transition periods, and not to the product coverage. While the treatment of LDCs in customs union remains complex and unresolved, given the limited effect of any possible SDT, practical, case-by-case solutions might prove to be warranted.

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ANNEXES

Table 1: Synopsis of issues in African Continental Free Trade Area tariff negotiation modalities

Theme	Expected issues (*ex ante* observation)	Agreed modalities	*Ex post* observation
MFN vs reciprocity	Multilateralization of REC preference *vs* reciprocity-based multilateralization?	"MFN" and "reciprocity" undefined and listed as negotiating principles.	Reciprocity-based negotiations assumed in request-and-offer negotiations. How MFN principle would be applied after request-offer negotiations remain implicit (*i.e.*, whether the results would be multilateralized or not).
REC *acquis*	REC preference to be protected, so that RECs ≥ AfCFTA; *i.e.*, Existing REC and TFTA liberalization levels are determinant of the level of AfCFTA liberalization	"Improve the level of market access in respective RECs." 97% coverage presumes that AfCFTA may supersede some REC preferences (RECs ≤ AfCFTA)	The level of ambition higher than expected. Whether the parties can undertake REC-plus liberalization under AfCFTA need to be ascertained. Parties' AfCFTA liberalization to be coordinated internally within RECs. Implementation issues may arise for political economy reasons.
Level of ambition	85–90%, judging from the existing levels of liberalization targets under RECs, EPAs, TFTA and WTO practices	90% generally and 97% in practice with sensitive products	The level of ambition higher than expected. 90% already higher than TFTA target. The 97% coverage was opted for to ensure effective liberalization but may require certain RECs additional intra-REC liberalization. May raise implementation issues.
Base rate	MFN applied rates as of 2015 (before the launch of negotiations)?	"Applied rates upon the entry into force of the CFTA"	To be understood as applied MFN rates.
Tariff liberalization approach	3–5 bands (*e.g.*, immediate, short TP, moderate TP, long TP and excluded), drawing on REC experience	3 bands (general, sensitive and excluded)	A simpler structure preferred.
Length	0–15 yrs, drawing on REC experiences & WTO practice	5 yrs (10 yrs for LDCs)	Reasonably short TPs preferred.
Staging	Equal annual reduction, or no pre-defined staging as far as tariff elimination target date is met, drawing on REC experience and WTO practice	Equal annual reduction ("Equal installment", "linear approach")	A simpler approach preferred. Technical issue of annual incremental reduction may arise.
Sensitive products	X% of tariff lines, subject to longer TP (up to approx. 15 yrs), drawing on REC and EPA experience and WTO practice	X = 7%, Longer TP of 10 yrs (13 yrs for LDCs). Liberalization may start in the 6th year to be completed within 10 yrs (13 yrs for LDCs).	7% of tariff line in practice means "covered" by liberalization. Extra time limited to 5 and 3 yrs (as compared to 5 and 10 yrs)
Exclusion list	Y%, excluded. Double qualification needed.	Y = 3%, initially tariff line definition only subject to "anti-concentration clause." Double qualification agreed in 2018 (subject to "an import value limitation of 10% of the imports from State parties").	Critically important for AfCFTA effect. Product selection and measurement of import values matters. Measurement adequacy requires careful assessment.

Table 1: Synopsis of issues in African Continental Free Trade Area tariff negotiation modalities *(cont.)*

Theme	Expected issues (*ex ante* observation)	Agreed modalities	*Ex post* observation
Measurement	MFN imports/extra-REC imports only, that are subject to liberalization?	Undefined. Presumably all intra-African imports	To be ascertained. Data and measurement matter. Affect the scope of product exclusion.
Review (sequential approach)	Continuous negotiations to reduce the number of excluded products as and when REC liberalization advances	"a review process after a 5 year period and shall be subject to negotiation".	Less relevant given the restrictive scope of the exclusion list of 3% subject to 10% import value cap already determined.
SDT – General	All LDCs, plus vulnerable economies?	Limited to LDCs	Opted for restrictive approach given the generally low level of development among the parties.
SDT – Special case	The general level of ambition (*e.g.* 90%) may cater for special concerns	G7 special modalities	The special G7 modalities matter given the high level of ambition (97%)
SDT – Treatment	May apply coverage and TP	Apply only to TPs and not to coverage	Opted for restrictive approach given the generally low level of development among the parties.
SDT – Customs union	Possible criteria to treat certain CU as LDCs (*e.g.*, no less than 50% of members to be LDCs)	Unresolved (internal solution?)	Proved to be highly sensitive. Specific case-by-case solution?
Initial tariff offers	Timetables, format, data requirements, technical issues (national tariffs vs HS6), HS versions to be defined	Timetables, process and modalities undefined	Need substantial work. Data, measurement matter. Need national consultation and intra-REC coordination to define SP and ELS as per double-qualification rule.
Request and offer negotiations	Timetables, format, data requirements, technical issues (national tariffs vs HS6), HS versions to be defined	Timetables, process and modalities undefined	Challenge given the number of bilateral pairs. Reciprocity first and them MFN. Application of "substantive trade interest" rule may be considered.
Configuration/ negotiating parties	Individual countries and customs unions as negotiating parties. Should exclude intra-REC negotiation in principle, with negotiating parties essentially limited to some 28 parties without preferential trade arrangements (and addressing MFN applied rates).	Individual countries and customs unions as negotiating parties.	Inter-REC negotiations addressing MFN rates can reduce the number of bilateral pairs, though still large. Implication is that ECOWAS et al, which belong to limited RECs are expected to face a greater number of negotiating parties, can represent challenge.

Table 2: Regional Economic Community membership

Country	UMA	COMESA	EAC	SADC	SACU	ECOWAS	UEMOA	ECCAS	CEMAC	IGAD	CEN-SAD	Total	LDCs	Nego. party
Algeria	X											1		Non-LDC
Angola				X				X				2	X	LDC
Benin						X	X				X	3	X	ECOWAS
Botswana				X	X						X	3		SACU
Burkina Faso						X	X					2	X	ECOWAS
Burundi		X	X					X				3	X	EAC
Cameroon								X	X			2		CEMAC
Cabo Verde						X						1		ECOWAS
Central African Republic								X	X		X	3	X	CEMAC
Chad								X	X		X	3	X	CEMAC
Congo								X	X			2		CEMAC
Comoros		X									X	2	X	LDC
Côte d'Ivoire						X	X				X	3		ECOWAS
Democratic Republic of the Congo		X		X				X				3	X	LDC
Djibouti		X								X	X	3	X	LDC
Egypt		X									X	2		Non-LDC
Equatorial Guinea								X	X			2		CEMAC
Eritrea		X								X	X	3	X	LDC
Eswatini		X		X	X							3		SACU
Ethiopia		X								X		2	X	LDC
Gabon								X	X			2		CEMAC
Gambia						X					X	2	X	ECOWAS
Ghana						X					X	2		ECOWAS
Guinea Bissau						X	X				X	3	X	ECOWAS
Guinea						X					X	2	X	ECOWAS
Kenya		X	X							X	X	4		EAC
Lesotho				X	X							2	X	SACU
Liberia						X					X	2	X	ECOWAS
Libya	X	X									X	3		Non-LDC

Table 2: Regional Economic Community membership *(cont.)*

Country	UMA	COMESA	EAC	SADC	SACU	ECOWAS	UEMOA	ECCAS	CEMAC	IGAD	CEN-SAD	Total	LDCs	Nego. party
Madagascar		X		X								2	X	LDC
Malawi		X		X								2	X	LDC
Mali						X	X				X	3	X	ECOWAS
Mauritania	X										X	2	X	LDC
Mauritius		X		X								2		Non-LDC
Morocco	X										X	2		Non-LDC
Mozambique				X								1	X	LDC
Namibia				X	X							2		SACU
Niger						X	X				X	3	X	ECOWAS
Nigeria						X					X	2		ECOWAS
Rwanda		X	X									2	X	EAC
Sao Tome and Principe								X			X	2	X	LDC
Senegal						X	X				X	3	X	ECOWAS
Seychelles		X		X								2		Non-LDC
Sierra Leone						X					X	2	X	ECOWAS
Somalia										X	X	2	X	LDC
South Africa				X	X							2		SACU
South Sudan		X								X		2	X	LDC
Sudan		X								X	X	3	X	LDC
United Republic of Tanzania			X	X								2	X	EAC
Togo						X	X				X	3	X	ECOWAS
Tunisia	X										X	2		Non-LDC
Uganda		X	X							X		3	X	EAC
Zambia		X		X								2	X	LDC
Zimbabwe		X		X								2		Non-LDC
Total (54)	**5**	**20**	**5**	**15**	**5**	**15**	**8**	**10**	**6**	**8**	**28**	**125**	**33**	**(27)**

Note: Morocco has regained the African Union membership since 2017.
The African Union membership also includes the Western Sahara. See endnote 16.
Cabo Verde and Equatorial Guinea graduated from LDC status in 2007 and 2017 respectively.
Angola and Sao Tome and Principe are scheduled to graduate in 2021 and 2024 respectively.

Table 3: African Continental Free Trade Area negotiating parties

	Algeria	Angola	Comoros	Democratic Republic of Congo	Djibouti	Egypt	Eritrea	Ethiopia	Libya	Madagascar	Malawi	Mauritania	Mauritius	Morocco*	Mozambique	Sao Tome and Principe	Seychelles	Somalia	South Sudan	Sudan	Tunisia	Zambia	Zimbabwe	Western Sahara	EAC	ECOWAS	CEMAC	SACU	Total REC partners	Total NP
Algeria	X								X			X		X							X								4	23
Angola		X	X	X	X	X	X	X	X	X	X		X		X	X	X		X	X		X	X		X		X	X	20	7
Comoros		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Democratic Republic of Congo		X	X	X	X	X	X	X	X	X	X		X		X	X	X		X	X		X	X		X		X	X	20	7
Djibouti		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Egypt		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Eritrea		X	X	X	X	X	X	XX	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Ethiopia		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Libya	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X		X	X	X	X	X		X			X	22	5
Madagascar		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Malawi		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Mauritania	X								X			X		X							X								4	23
Mauritius		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Morocco*	X								X			X		X							X						X		4	23
Mozambique		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Sao Tome and Principe		X		X												X									X				4	23
Seychelles		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Somalia																		X											0	27
South Sudan		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Sudan		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Tunisia	X								X			X		X							X								4	23
Zambia		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Zimbabwe		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X		X	X	18	9
Western Sahara																								X					0	27
EAC (5)		X	X	X	X	X	X	X	X	X	X		X		X	X	X		X	X		X	X		X		X	X	20	7
ECOWAS (10)																										X			0	27
CEMAC (6)		X		X												X									X		X		4	23
SACU (5)		X	X	X	X	X	X	X	X	X	X		X		X		X		X	X		X	X		X			X	18	9
Total REC partners	**4**	**20**	**18**	**20**	**18**	**18**	**18**	**18**	**22**	**18**	**18**	**4**	**18**	**4**	**18**	**4**	**18**	**0**	**18**	**18**	**4**	**18**	**18**	**0**	**20**	**0**	**4**	**18**	**376**	
Total NP	**23**	**7**	**9**	**7**	**9**	**9**	**9**	**9**	**5**	**9**	**9**	**23**	**9**	**23**	**9**	**23**	**9**	**27**	**9**	**9**	**23**	**9**	**9**	**27**	**7**	**27**	**23**	**9**		**380**

Table 4: Selected gross domestic product and merchandise trade indicators for African countries, 2016

	GDP (US$ million)*	GDP as % of total Africa	GDP *per capita*	Average GDP growth (%) (2011–2016)	Exports to the world (US$ million)*	Intra-African exports (US$ million)*	Intra-African exports as % of total Africa	Intra-African exports as % of exports to the world
Algeria	159 049	7.4	3 917	3.4	41 725	2 417	3.4	5.8
Angola	106 918	5.0	3 711	3.5	39 639	1 457	2.0	3.7
Benin	8 894	0.4	818	5.8	1 898	750	1.0	39.5
Botswana	15 566	0.7	6 917	4.4	7 185	1 445	2.0	20.1
Burkina Faso	11 695	0.5	627	5.1	2 344	376	0.5	16.0
Burundi	2 874	0.1	273	3.0	119	27	0.0	22.9
Cabo Verde	1 639	0.1	3 038	1.3	69	6	0.0	9.2
Cameroon	32 217	1.5	1 374	5.3	4 496	563	0.8	12.5
Central African Republic	1 810	0.1	394	-7.8	91	10	0.0	11.5
Chad	11 267	0.5	780	1.7	2 667	7	0.0	0.2
Comoros	1 150	0.1	1 445	3.7	24	2	0.0	6.8
Congo	7 778	0.4	1 517	3.4	5 727	411	0.6	7.2
Côte d'Ivoire	36 768	1.7	1 552	9.2	12 248	3 618	5.1	29.5
Democratic Republic of the Congo	40 337	1.9	512	7.3	5 975	1 016	1.4	17.0
Djibouti	1 892	0.1	2 007	5.8	134	57	0.1	42.3
Egypt	270 144	12.6	2 823	3.4	24 749	3 208	4.5	13.0
Equatorial Guinea	10 678	0.5	8 742	-3.2	7 967	313	0.4	3.9
Eritrea	5 414	0.3	1 093	4.6	482	12	0.0	2.4
Eswatini	4 007	0.2	2 983	4.1	1 676	1 063	1.5	63.4
Ethiopia	70 315	3.3	687	9.7	3 132	734	1.0	23.4

Table 4: Selected gross domestic product and merchandise trade indicators for African countries, 2016 *(cont.)*

	GDP (US$ million)*	GDP as % of total Africa	GDP *per capita*	Average GDP growth (%) (2011–2016)	Exports to the world (US$ million)*	Intra-African exports (US$ million)*	Intra-African exports as % of total Africa	Intra-African exports as % of exports to the world
Gabon	13 863	0.6	7 002	4.7	7 230	338	0.5	4.7
Gambia	986	0.0	484	3.4	107	46	0.1	43.0
Ghana	42 794	2.0	1 517	5.4	10 885	2 342	3.3	21.5
Guinea	8 476	0.4	684	4.7	2 047	190	0.3	9.3
Guinea-Bissau	1 123	0.1	618	2.4	227	11	0.0	4.7
Kenya	70 526	3.3	1 455	5.5	5 584	2 356	3.3	42.2
Lesotho	2 241	0.1	1 017	3.6	855	340	0.5	39.8
Liberia	2 757	0.1	598	6.0	293	9	0.0	3.1
Libya	42 960	2.0	6 826	-12.6	12 400	441	0.6	3.6
Madagascar	11 222	0.5	451	2.7	2 221	193	0.3	8.7
Malawi	5 318	0.2	294	4.1	1 170	407	0.6	34.8
Mali	14 002	0.7	778	8.1	2 678	354	0.5	13.2
Mauritania	4 667	0.2	1 085	4.7	1 667	297	0.4	17.8
Mauritius	12 216	0.6	9 679	3.6	2 590	440	0.6	17.0
Morocco	103 607	4.8	2 937	4.1	22 904	1 950	2.7	8.5
Mozambique	10 930	0.5	379	6.6	3 688	951	1.3	25.8
Namibia	10 947	0.5	4 415	5.1	4 219	2 058	2.9	48.8
Niger	7 528	0.4	364	6.4	1 195	241	0.3	20.2
Nigeria	404 649	18.9	2 176	3.8	64 945	7 366	10.3	11.3
Rwanda	8 474	0.4	711	7.2	694	286	0.4	41.2
Sao Tome and Principe	343	0.0	1 715	4.1	10	1	0.0	9.2

Table 4: Selected gross domestic product and merchandise trade indicators for African countries, 2016 *(cont.)*

	GDP (US$ million)*	GDP as % of total Africa	GDP *per capita*	Average GDP growth (%) (2011–2016)	Exports to the world (US$ million)*	Intra-African exports (US$ million)*	Intra-African exports as % of total Africa	Intra-African exports as % of exports to the world
Senegal	14 605	0.7	948	5.0	2 667	1 228	1.7	46.0
Seychelles	1 434	0.1	15 217	4.4	503	45	0.1	9.0
Sierra Leone	3 675	0.2	497	3.1	900	34	0.0	3.7
Somalia	1 318	0.1	92	2.6	463	4	0.0	0.8
South Africa	295 440	13.8	5 274	1.7	78 118	23 577	33.0	30.2
South Sudan	6 534	0.3	534	–	–	–	–	–
Sudan	82 887	3.9	2 094	–	3 394	106	0.1	3.1
Togo	4 449	0.2	585	5.9	1 209	620	0.9	51.3
Tunisia	41 704	1.9	3 657	2.1	14 803	1 779	2.5	12.0
Uganda	25 308	1.2	610	4.3	2 357	1 274	1.8	54.1
United Republic of Tanzania	48 860	2.3	879	6.8	4 767	1 372	1.9	28.8
Zambia	21 063	1.0	1 270	4.6	7 492	1 868	2.6	24.9
Zimbabwe	16 124	0.8	998	4.2	2 867	1 508	2.1	52.6
Africa	**2 143 440**	**100.0**	**1 752**	**3.3**	**429 555**	**71 528**	**100.0**	**16.7**
World	**75 648 868**	**3 529.3**	**10 133**	**2.7**	**17 118 494**	**568 086**	**794.2**	**3.3**

Source: UNCTADStat.
Note: GDP in US dollars at current prices. Exports are average for 2014–2016.

Table 5: Weighted average tariffs effectively applied by African countries on imports from different Regional Economic Communities, 2016 (latest year available for missing years)

	Tariff	Trade	All Africa	UMA	COMESA	ECCAS	ECOWAS	SADC	Trade source
Algeria	2016	2016	8.8	6.3	5.8	26.8	27.7	15.8	CMT
Angola	2016	2015	16.1	21.8	19.8	21.6	12.4	15.4	CMT
Benin	2016	2016	5.4	9.9	9.3	6.3	3.3	8.5	CMT
Botswana	2016	2016	0.0	22.6	2.6	0.2	9.9	0.0	CMT
Burkina Faso	2016	2015	4.1	7.5	6.5	5.2	2.6	9.6	CMT
Burundi	2016	2015	1.9	11.0	1.8	1.2	12.7	3.5	CMT
Cameroon	2014	2014	9.8	17.4	12.6	0.7	8.6	19.5	CMT
Cabo Verde	2015	2014	10.5	5.9	6.5	5.4	14.5	17.2	CMT
Central African Republic	2016	2016	17.6	24.1	23.1	30.0	13.8	23.2	CMT
Chad	2016	2016	15.7	16.1	17.7	30.0	11.5	26.7	INV
Comoros	2015	2013	1.1	5.3	0.0	5.9	0.0	1.0	CMT
Democratic Republic of the Congo	2014	2013	9.7	20.0	12.8	11.6	8.5	9.3	INV
Congo	2015	2014	8.0	12.4	13.5	4.0	9.7	9.6	CMT
Cote d'Ivoire	2016	2015	2.9	8.9	8.7	4.7	0.9	8.9	CMT
Djibouti	2014	2009	13.3	17.3	12.5	21.7	12.6	19.1	CMT
Egypt	2016	2016	1.3	0.0	0.1	4.8	4.3	2.9	CMT
Equatorial Guinea	2007	2007	21.0	30.0	–	_	–	20.9	INV
Eritrea	2006	2003	2.0	17.6	1.2	3.9	11.3	6.1	CMT
Eswatini	2016	2016	0.1	10.2	23.3	88.0	91.4	0.0	INV
Ethiopia	2015	2015	10.3	0.3	13.3	9.5	29.1	15.3	CMT
Gabon	2016	2016	19.5	20.3	14.7	27.1	20.7	19.3	INV
Gambia	2013	2013	16.6	11.1	10.7	14.1	16.8	17.5	CMT
Ghana	2016	2016	6.3	10.2	10.8	8.7	0.0	10.1	CMT
Guinea	2012	2008	12.9	18.8	10.2	13.2	13.5	9.6	CMT
Guinea-Bissau	2014	2013	4.3	16.7	19.4	_	3.8	6.1	INV
Kenya	2016	2016	3.0	3.9	0.0	0.0	14.0	3.9	INV
Lesotho	2016	2016	0.0	11.9	0.0	_	_	0.0	INV
Liberia	2014	2014	8.2	3.5	6.4	20.0	9.1	8.4	INV
Libya	2006	2007	0.0	0.0	0.0	_	0.0	0.0	CMT
Madagascar	2016	2016	11.4	11.6	13.7	10.2	6.3	11.0	CMT
Malawi	2016	2015	0.0	10.6	0.1	0.3	12.2	0.0	CMT
Mali	2016	2016	4.7	14.7	9.6	20.0	2.8	13.6	INV
Mauritania	2015	2016	9.0	9.1	7.2	15.0	9.4	6.5	CMT
Mauritius	2016	2016	0.0	1.0	0.0	0.0	0.2	0.0	CMT
Morocco	2016	2016	0.8	0.0	0.3	3.4	3.1	3.5	CMT
Mozambique	2016	2015	0.1	7.2	0.4	4.7	8.6	0.0	CMT
Namibia	2016	2016	0.0	0.3	0.1	0.1	4.6	0.0	CMT

Table 5: Weighted average tariffs effectively applied by African countries on imports from different Regional Economic Communities, 2016 (latest year available for missing years) *(cont.)*

	Tariff	Trade	All Africa	UMA	COMESA	ECCAS	ECOWAS	SADC	Trade source
Niger	2016	2016	9.6	15.0	7.9	17.6	9.1	9.2	CMT
Nigeria	2016	2016	7.7	8.2	13.4	12.2	0.0	9.8	INV
Rwanda	2016	2016	1.1	4.1	0.2	3.5	15.1	2.9	CMT
Sao Tome and Principe	2016	2016	18.5	20.0	_	_	8.9	18.9	INV
Senegal	2016	2016	5.2	12.2	10.2	6.7	2.3	8.0	CMT
Seychelles	2016	2016	2.4	0.0	1.5	1.7	6.7	2.5	CMT
Sierra Leone	2012	2012	10.7	17.1	9.7	5.0	10.8	10.4	INV
South Africa	2016	2016	0.7	5.6	2.6	0.0	0.1	0.8	CMT
United Republic of Tanzania	2016	2016	2.6	57.2	2.9	0.7	4.3	0.4	CMT
Togo	2016	2016	8.8	12.4	11.9	8.6	8.3	7.4	CMT
Tunisia	2016	2016	5.3	2.9	14.4	5.6	8.4	9.4	CMT
Uganda	2016	2015	2.2	12.4	0.4	2.1	12.6	5.7	CMT
Zambia	2016	2015	4.5	3.4	10.9	0.0	9.7	0.0	CMT
Zimbabwe	2016	2016	0.4	5.1	0.0	3.8	16.8	0.4	CMT
All Africa	**2016**	_	**3.4**	**5.5**	**5.2**	**1.5**	**3.9**	**2.3**	_

Source: TRAINS/WITS.
Note: Effectively applied rates inclusive of preferential tariff rates when available.
"CMT" denotes UN COMTRADE database. "INV" denotes mirror data.

ENDNOTES

[1] The paper is accessible at:http://unctad.org/en/PublicationsLibrary/ditc2015misc3_en.pdf.

[2] By August 2019, 27 of 54 countries that had signed the Agreement have completed ratification. Only Eretria is yet to sign the Agreement.

[3] The package of consolidated legal documents signed by 44 African Union leaders in Kigali, Rwanda, 21 March 2018, were composed of the three core legal texts, namely: (i) Framework Agreement; (ii) Protocol on Trade in Goods; and (iii) Protocol on Trade in Services, as well as associated agreements including (iv) Protocol on Dispute Settlement; (v) Modalities for Tariff Liberalization, and (vi) selected Annexes to the Protocol on Trade in Goods, including those on rules of origin, customs cooperation, trade facilitation, non-tariff barriers, technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS), trade remedies, transit trade and trade facilitation.

[4] African Union (2015), Decision on the launch of Continental Free Trade Area negotiations (Assembly/AU/Dec.569(XXV)), adopted at the 25th ordinary session of the Assembly of the Union, 14–15 June 2015, Johannesburg, South Africa. AfCFTA negotiations are conducted within AfCFTA Negotiating Forum under the auspices of the African Union, overseen by the Committee of Senior Trade Officials and the African Ministers of Trade (AMOT) and supported by different subsidiary and advisory bodies, including the Continental Task Force (CTF) composed of RECs, ECA and UNCTAD, and the Technical Working Groups (TWGs).

[5] For a discussion of boosting intra-African trade by fast-tracking AfCFTA, see UNCTAD and African Union (2012), Trade liberalization, investment and economic integration in African Regional Economic Communities towards the African Common Market (UNCTAD/DITC/TNCD/2011/2).

[6] The agreed African Union Roadmap provides that pan-African negotiations would be based on “consolidation of regional FTA processes into the CFTA”, implying negotiations between the TFTA and other RECs, including possible inter-REC arrangements covering Northern-Central-Western African regions, and leaving the option of individual countries that are not ready to join at a later stage. African Union (2012), Declaration on boosting intra-African trade and the establishment of a Continental Free Trade Area (CFTA) (Assembly/AU/Decl.1(XVIII)), adopted at 18th Ordinary Session of the Assembly of the Union, Addis Ababa, Ethiopia, 29–30 January 2012.

[7] In order to meet the stated objective of finalizing the negotiations by 2017, the AfCFTA parties decided to fast-track the adoption of a package of AfCFTA texts by 2017, so that market access negotiations could continue as a built-in agenda.

[8] The TFTA was launched in July 2015 also without completion of market access negotiations.

[9] Cabo Verde and Equatorial Guinea graduated from LDC status in 2007 and 2017 respectively. Angola and Sao Tome and Principe are scheduled to graduate in 2021 and 2024 respectively.

[10] The African Union recognizes eight RECs as building blocks towards a wider African integration. These are: Arab Maghreb Union (UMA); Common Market for Eastern and Southern Africa (COMESA); Community of Sahel–Saharan States (CEN–SAD); East African Community (EAC); Economic Community of Central African States (ECCAS); Economic Community of West African States (ECOWAS); Intergovernmental Authority on Development (IGAD), and Southern African Development Community (SADC). Of these, CEN-SAD and IGAD do not entail commitments on trade integration among members. Other trade-integrating sub-regional blocks include: Economic Community of Central African States (CEMAC); Southern African Customs Union (SACU), and West African Economic and Monetary Union (UEMOA). See table 2 in Annex.

[11] For a status of regional integration processes in Africa, see UNECA, African Union and African Development Bank, *Assessing Regional Integration in Africa (ARIA)*, various issues (I–IX), Addis Ababa, Ethiopia.

[12] Report of the Seventh Meeting of African Union Ministers of Trade, 12–13 December 2018, Cairo, Egypt (TI/AfCFTA/AMOT/7/FINAL/REPORT).

[13] Modalities for Continental Free Trade Area on Tariff Negotiations (TI/CFTA/AMOT/3/TIG/MOD/FINAL) adopted at the Third Meeting of African Union Ministers of Trade (AMOT 3), 15–16 June 2017 (TI/CFTA/AMOT/3/REPORT/FINAL). Furthermore, seven countries (“G-7” – Djibouti, Ethiopia, Madagascar, Malawi, Sudan, Zambia and Zimbabwe) had made reservation over the product coverage of 90 per cent. A compromise solution was subsequently adopted in September 2017 according to which these countries would liberalize exceptionally 85 per cent of tariff lines over 10 years and the remaining 5 per cent over 15 years to achieve 90 per cent coverage, in accordance with an “implementation matrix” that will be determined by themselves and that will be annexed to their AfCFTA schedules of concessions for trade in goods (“Proposed updated modalities for G-7 special needs negotiating state parties”, CFTA-NF8, November 2017).

[14] For a discussion of the final stage of modalities negotiations, see UNECA (2018), African Continental Free Trade Area: Towards the finalization of modalities on goods, Addis Ababa, Ethiopia. For a discussion of post-modalities phase of negotiations, see Lunemborg, Peter (2019), 'Phase 1B' of the African Continental Free Trade Area (AfCFTA) negotiations: Policy Brief No. 63, South Centre, June.

[15] The entry into force of the AfCFTA in May 2019 also underscored the urgency of completing market access and related negotiations, including rules of origin, in order to implement effective market opening under the Agreement.

[16] "Sahrawi Arab Democratic Republic" has held a full membership of the African Union since 1982 and in that capacity participates in the AfCFTA negotiations. The entity is however not a member State of the United Nations. Accordingly, reference is made throughout the paper to "Western Sahara" without prejudice to its legal status.

[17] See table 4 in Annex for a compilation of selected GDP and trade data for individual countries.

[18] This may also be due to the fact that updated preferential tariffs data are not fully captured for these regions.

[19] Grinsted Jensen H and Sandrey R (2015). *The Continental Free Trade Area – A GTAP assessment*, TRALAC.

[20] Mevel S and Karingi S (2012). Deepening regional integration in Africa: A computable general equilibrium assessment of the establishment of a Continental Free Trade Area followed by a Continental Customs Union, a paper for the 7th African Economic Conference, Kigali, Rwanda, 30 October 2012–2 November 2012.

[21] Ibid.

[22] Saygili M, Peters R and Knebel C (2018). African Continental Free Trade Area: Challenges and opportunities of tariff reductions, UNCTAD Research Paper No. 15 (UNCTAD/SER.RP/2017/15).

[23] With the proliferation of RTAs and application of multiple preferential tariffs by a given country, MFN tariffs usually mean "least-favoured" nation treatment. Recent RTAs have therefore introduced a new notion of "MFN" treatment according to which benefits accruing from future RTAs that may be concluded by one party with third parties be automatically extended to the RTA partners. This "Third-Party MFN" should also be distinguished with intra-AfCFTA MFN principle.

[24] Application of intra-African MFN may make sense for those RECs that have achieved the level of integration lower than AfCFTA or whose FTAs or customs unions are not functional. This points to another issue of whether members of such RECs would have implementation capacity to undertake deeper liberalization in a larger context of AfCFTA.

[25] There was concern among African Union members that setting positive MFN rates as base rates would delay the AfCFTA liberalization, be contrary to the principle of RECs as acquis, and also may allow members to raise their existing preferential zero rates up to the applied MFN rates defined as base rates.

[26] The agreed Modalities defines the base rate as "the applied rates upon entry into force of the CFTA".

[27] The modalities phase of AfCFTA negotiations that focused on the design of substantive liberalization approaches (discussed in Section III) were conducted in a plenary format in a "multilateral" track, *i.e.*, Negotiating Forum, where negotiating configuration mattered little. However, once initial tariff offers are prepared according to the agreed Modalities and bilateral request-offer negotiations start, configuration of negotiations as discussed here – who negotiates with whom – will matter.

[28] Possibly CEMAC as a group as a customs union.

[29] See table 3 in Annex.

[30] Here includes South Sudan which is not signatory to TFTA.

[31] The treatment of those REC members that do not implement intra-REC preferential trade arrangements such as Angola in SADC until recently needs to be ascertained.

[32] In the sense that intra-REC tariffs are not subject to AfCFTA liberalization bur RECs may decide, if they so wish, to also liberalize intra-REC tariffs in conjunction with AfCFTA elimination of MFN duties.

[33] Exports of country A to country B may account for a small share in country B's total intra-African imports but represent 100 per cent of country A's total intra-African exports. Satisfying reciprocity requirement in such a situation may prove to be challenging.

[34] "100 per cent cuts" refers to the extent to which the base rate is reduced. Any positive initial duties irrespective of their level (*e.g.*, 10 per cent or 50 per cent) would be reduced to 0 per cent, *i.e.*, reduction by 100 per cent. "100 per cent cut" should not be confused with product coverage, which can be less than 100% under RTAs.

[35] In the agreed AfCFTA modalities, (i) products completed excluded from liberalization was referred to as "exclusion list products" and (iii) products subject to liberalization over longer transition period was referred to as "sensitive products."

[36] UNCTAD (2015), Elements of modalities for the African Continental Free Trade Agreement market access negotiations on tariffs: Some key issues for consideration. http://unctad.org/en/PublicationsLibrary/ditc2015misc3_en.pdf.

[37] At an earlier stage of negotiations, different options for the level of ambition and transitional arrangements were considered. An earlier version of the draft modalities for AfCFTA tariff negotiations (TI/AfCFTA/TIG/MOD/Draft) provided for four options: Option 1 “Linear approach”; Option 2 “Special product categorization approach”; Option 3 “Progressive tariff liberalization”, and; Option 4 “Two-phased linear cuts process”. The Fifth AfCFTA-NF produced the revised modalities option, which foresaw the product coverage in the range of [85–95%] and an implementation timeframe in the range of [5–10 years] with immediate liberalization of nuisance tariffs defined as those tariffs equal to or less than 6 per cent (AU/TI/AfCFTA/NF/5/FINAL/REPORT, Annex III).

[38] Onguglo B and Ito T, How to make EPAs WTO-compatible? Reforming the rules on regional trade agreements, ECDPM Discussion Paper No. 40, 2003.

[39] TFTA negotiating modalities agreed in 2013 set the target of a liberalization threshold of between 60–85 per cent, with 15 per cent of tariff lines allowed as exclusions from liberalization (and subject to further negotiations), and a tariff liberalization period of between 5 to 8 years (for those countries that have not liberalized their trade under existing RECs). Statement by Mr. Sindiso Ngwenya, Secretary General of COMESA, January 2015. http://www.tralac.org/news/article/6974-update-on-the-tripartite-free-trade-area-negotiations-statement-by-mr-sindiso-ngwenya-secretary-general-of-comesa.html

[40] On the other hand, the TFTA target of 60–85 per cent set out in the modalities may in practice be seen as conservative negotiated compromise. Since TFTA market access negotiations continue and the rest of the 15–40 per cent of products are expected to be subject to continued negotiations, and many TFTA parties could be willing to go beyond that level closer to the higher individual REC levels (near 100 per cent), AfCFTA may go beyond this level and the liberalization processes may be aligned between TFTA and AfCFTA processes.

[41] The footnote 4 of the Modalities in respect of the exclusion list products provide that “In this category, integral to the Modalities, the percentage shall not be pre-determined ex ante” and that “Excluded products shall be on a case-by-case basis and shall be subject to a review process after a 5 (five) year period and shall be subject to negotiation”.

[42] In modalities negotiations, this approach changed when negotiating attention turned to defining *ex ante* the values of “X” and “Y” per cent for sensitive products and the exclusion list products. In that context, possible trade effect of product exclusion on AfCFTA liberalization efforts were placed under greater scrutiny.

[43] Ito T (2017), Possible disciplines for product exclusion under the modalities for CFTA tariff negotiations: Submission to the Seventh Meeting of the AfCFTA Negotiating Forum, 2–7 October 2017, Addis Ababa, Ethiopia (mimeo).

[44] Footnote 4 of the agreed Modalities stated that “Products on the Exclusion List that are traded shall be subject to an anti-concentration clause of which the objective shall be the prevention of concentration of flexibilities in chapters and/or product groups of commercially meaningful market access.”

[45] Ito T (2017) *op. cit.* See also Cernat L, Onguglo B and Ito T (2007), RTAs and WTO compatibility: Catch me if you can? The case of EPA negotiations, MPRA Paper No. 3645, 16 April.

[46] Options for the percentages of sensitive and the exclusion list products in terms of tariff lines included: 1–9, 3–7 and 5–5.

[47] Under ACP-EU EPA, liberalization of 80 per cent of products and imports by ACP side over 15 years was the agreed basis of commitment.

[48] See AU/TI/AfCFTA/NF/5/FINAL/REPORT, Annex III. UNCTAD (2015), Building the African continental free trade area: Some suggestions on the way forward. Such early harvest could include those that already enjoy duty-free treatment under some sort of temporary tariff concession schemes and autonomous tariff quotas.

[49] For comparison purpose, discussion on tariff elimination schedule here assumes equal annual reduction.

[50] If it is assumed that reduction takes place 1 January of each year, the above indeed amounts to tariff elimination with five equal annual “instalments” over 4 years, and not 5 years, as at 1 January of the fifth year, tariff elimination will have been completed. For convenience, however, reference is made in what follows to “transition period of X years” to indicate tariff elimination with “X annual instalments”.

[51] Practical implementation issue may arise however for those countries with limited customs administration capabilities. The equal annual reduction requires changes in applied rates in each year. Implementing such changes every year may prove to be overly onerous and thus costly.

[52] Accessible at: https://ustr.gov/sites/default/files/TPP-Final-Text-US-General-Notes-to-Tariff-Schedule.pdf.

[53] Consisting of liberalization of 85 per cent of tariff lines over 10 years, and the remaining 5 per cent in 15 years.

Printed at United Nations, Geneva – 2000797 **(E)** – March 2020 – 430 – **UNCTAD/DITC/TNCD/2019/4**