AfCFTA Phase 1 Negotiations:
Issues and Challenges for Eastern Africa

A THIRD WORLD NETWORK - AFRICA PUBLICATION

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Issues and Challenges for Eastern Africa

2019

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1. Introduction and background

1.1 Issues and Challenges for East Africa

This study identifies issues and challenges of the African Continental Free Trade Area (AfCFTA), with a focus on East Africa.

Which countries belong to 'East' Africa? The African Union definition encompasses the following 14 countries, which could be subdivided:[1]

- Member States of the East African Community (EAC) except Burundi: Kenya, Rwanda, South Sudan, Tanzania, Uganda
- Island nations: Comoros, Madagascar, Mauritius, Seychelles
- 'Horn of Africa:' Djibouti, Eritrea, Ethiopia, Somalia, Sudan[2]

It should be noted that there is no common categorization across international organisations. Notably, the United Nations category of 'Eastern Africa' includes 20 countries or territories. Compared to the AU definition of East Africa, the UN considers Burundi, Malawi, Mozambique, Reunion (a French territory), Zambia and Zimbabwe to be East(ern) Africa.

In this study, the African Union definition of East Africa will be used with the addition of Burundi as this country is a member of the East African Community (EAC)

The study is structured as follows.

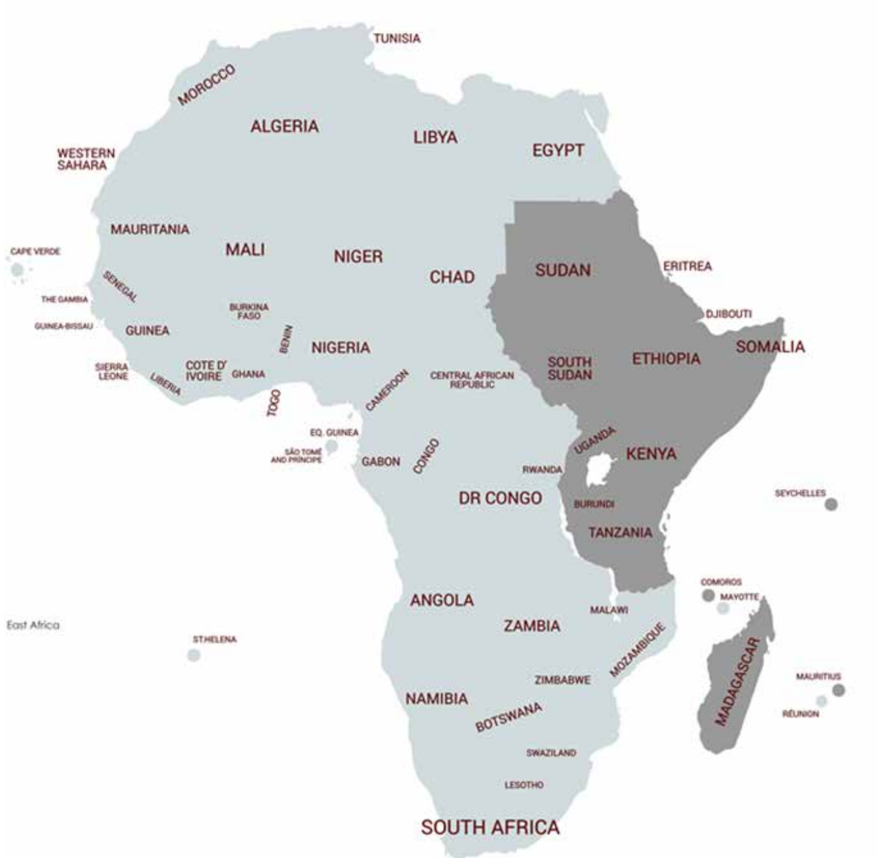
Section 1 provides the reader with the context. It discusses the state of play of the AfCFTA negotiations, a project that is part of the quest for African economic integration.

Section 2 analyses the geography of intra-African trade and trade agreements. It might be assumed that in the short-term, benefits will flow to the country that already trades a lot with other African countries, as trade is a reflection of the production capacity of a country. Furthermore, the impact and benefits of AfCFTA will also depend on the extent to which existing free trade agreements already cover intra-African trade.

[1] See 'Regions of the African Union', Wikipedia https://en.wikipedia.org/wiki/Regions_of_the_African_Union

[2] A single authoritative definition of Horn of Africa does not seem to exist. For example, some consider Sudan not part of the Horn of Africa.

Map - East Africa



Section 3 looks at the AfCFTA negotiation modalities, compares the required levels of liberalisation with those in other trade agreements between developing countries. Finally, two main challenges with the implementation of the modalities are highlighted: The issue of permutations (a multiplicity of negotiation partners) and treatment of customs unions.

Section 4 looks at the available evidence on the expected economic impacts of the AfCFTA, zooming in on East African countries.

Section 5 touches on some of the broader legal issues with the Africa, such as the relationship of the AfCFTA with other African regional trade agreement, the Tripartite FTA and the Most Favoured Nation (MFN) clause.

Sections 6 and 7 discuss rules of origin and services, respectively.

Finally, Section 8 provides a series of conclusions and actionable recommendations that civil society organisations and other stakeholders might consider going forward.

1.2 The quest for African economic integration

The adoption of the Agreement establishing the African Continental Free Trade Area (AfCFTA) in March 2018 by African Heads of State and Government represents an important milestone in the quest for African economic integration. A Protocol on Free Movement of Persons, Right to Residence and Right to Establishment was adopted as well.[3] The AfCFTA is expected to enter into force in 2019 upon ratification by at least 22 States (and deposit of the legal instrument with AU Secretariat).

The quest for African economic integration can be traced back to the 1963 Charter of the Organisation of African Unity (OAU, the predecessor of the African Union). Notwithstanding the political focus of the Charter, it nevertheless sets out the commitment of the Member States of the OAU to coordinate and harmonise their general policies in the field of economic cooperation. The following excerpts from the resolutions of the 1963 OAU's Conference of Independent African Heads of State and Government, highlight some of the key issues that have a bearing on the African economic integration agenda:

- "… the imperative necessity for African countries to pool their resources and harmonize their activities in the economic field…"
- "… the need to eliminate the barriers to trade among the African countries and thereby to strengthen their economies…"
- "… the possibility of establishing a free trade area between the various African countries…"
- "…the ways and means of effecting the harmonization of existing and future national development plans."

The 1991 Abuja Treaty establishing the African Economic Community (AEC), which entered into force in 1994, set out a 34-year plan for African countries to form an African Economic Community. This would be done through the creation of free trade agreements (FTAs) at the regional level followed by customs unions at the regional level. After that, an Africa-wide customs union would be formed.

A main difference between an FTA and customs union is that all countries belonging to a customs union maintain the same tariffs for imports from other countries

[3] https://au.int/en/treaties/protocol-treaty-establishing-african-economic-community-relating-free-movement-persons

(common external tariff, or CET) and apply a range of other common trade policies. This means that customs unions usually negotiate as a collective vis-a-vis other countries. Examples of customs unions on the African continent are the Southern African Customs Union (SACU), East African Community (EAC) and the Economic Community of West African States (ECOWAS, or CEDAO in French).

1.3 The African Continental Free Trade Area

The idea for an Africa-wide free trade agreement arose because of the following:

i) The realisation that an Africa-wide customs union is very difficult to achieve. If the timeline of the Abuja Treaty had been strictly followed, this should have been implemented in 2018.
ii) Several African countries that have not concluded any free trade agreement with other African countries (e.g. Angola, Ethiopia), are not part of a Regional Economic Community (REC) or the REC is dysfunctional (e.g. the Arab Maghreb Union between Morocco, Mauritania, Algeria and Tunisia).
iii) Several African countries are part of multiple RECs (e.g. Tanzania is member of EAC and SADC)

The January 2012 AU Assembly decision sought to 'fast-track' the establishment of a Continental Free Trade Area (CFTA)[4]. The 2012 AU Decision on Boosting Intra-African Trade and Fast Tracking the Continental Free Trade Area decided on operationalization of CFTA by the indicative date of 2017, based on the framework, Roadmap and Architecture, set out along with specific milestones[5]:

- Finalization of the East African Community (EAC)- the Common Market for Eastern and Southern Africa (COMESA)- Southern African Development Community (SADC) Tripartite FTA initiative by 2014;
- Completion of FTA(s) by Non-Tripartite RECs, through parallel arrangement(s) similar to the EAC-COMESA-SADC Tripartite Initiative or reflecting the preferences of their Member States, between 2012 and 2014;
- Consolidation of the Tripartite and other regional FTAs into a Continental Free Trade Area (CFTA) initiative between 2015 and 2016;
- Establishment of the Continental Free Trade Area (CFTA) by 2017 with the option to review the target date according to progress made.

[4] See AU (2012) Decision on Boosting Intra-African Trade and Fast-tracking of the CFTA, Assembly/AU/Dec.394(XVIII), 29-30 January 2012.

[5] AU (2012) Decision on Boosting Intra-African Trade and Fast Tracking the Continental Free Trade Area https://au.int/sites/default/files/documents/32454-doc-decision_-_english.pdf

Agenda 2063, the long-term strategy for the continent, registered the commitment of AU Members to “speed-up actions to fast-track the establishment of the CFTA by 2017.[6]

The June 2015 AU Assembly Decision formally launched of Continental Free Trade Area Negotiations.[7] The CFTA was later renamed into the African CFTA (AfCFTA), reportedly upon suggestion by Uganda. The negotiations were split into two ‘Phases’. The first Phase encompasses trade in goods & trade in services, including all the complementary rules (such as trade facilitation, transit, trade remedies, rules of origin). Phase 2 entails negotiations on investment, intellectual property and competition policies.

The 2018 AU Decision on the Draft Agreement establishing the African Continental Free Trade Area (AfCFTA) adopted the Agreement establishing the AfCFTA, including the Protocol on Trade in Goods, the Protocol on Trade in Services and the Protocol on Rules and Procedures on the Settlement of Disputes. In the same decision, it was recognized that the negotiations for Phase 1 were concluded with the exception of Annex 1 on Schedules for Tariff Concessions, Schedules of Specific Commitments for Trade in Services, an Appendix on the AfCFTA Rules of Origin, and the legal scrubbing of all the Annexes and Appendices, which all form part of the Built-In Agenda.[8] Phase 2 negotiations on investment, intellectual property and competition policies are expected to commence in 2019.

Regarding the Phase 1 issues, the negotiations on tariff concessions, rules of origin as well as services concessions continue as of 2019. In December 2018, African trade ministers endorsed the Modalities for Tariff Liberalisation which set out the parameters for the negotiation process such as levels of liberalization (see Section 3). They also adopted the Negotiating Guidelines for Schedules of Specific Commitments and Regulatory Frameworks for Trade in Services (See Section 7 below).

At the February 2019 Summit, African leaders “requested the African Union Ministers responsible for trade to: submit the Schedules of Tariff Concessions, and Schedules of Specific Commitments on Trade in Services in line with agreed modalities to the July 2019 and January 2020 Sessions of the Assembly, respectively, for adoption; and conclude the negotiations on Investment, Competition Policy and Intellectual Property Rights, and submit the draft legal texts to the January 2021 Session

[6] See AU, Agenda 2063: the Africa We Want (Popular Version, 2015), para. 72(h), p. 17.

[7] See AU (2015) Decision on the Launching of the Negotiations of the Establishment of the Continental Free Trade Area, Assembly/AU/Dec.569(XXV), 15 June 2015.

[8] African Union (2018) Decision On The Draft Agreement Establishing The African Continental Free Trade Area (AfCFTA) https://au.int/sites/default/files/decisions/34055-ext_assembly_dec_1x_e26_march.pdf

of the Assembly for adoption through the Specialised Technical Committee on Justice and Legal Affairs."[9]

The deadline of July 2019 was clearly not realistic given that i) tariff negotiations between countries usually take much longer and ii) even if countries or customs unions furnish one common offer for the rest of the continent, follow-up bilateral negotiations will take place and iii) not all rules of origin would be agreed upon, which is a prerequisite for the implementation of the AfCFTA (See Section 6 below).

Yet, the February 2019 AU Summit decision clearly showed that the priority for 2019 would be the negotiation and submission of tariff schedules by AU Member States.

[9] Key Decisions of the 32nd Ordinary Session of the Assembly of the African Union, Press release African Union 12 February 2019, https://au.int/en/pressreleases/20190211/key-decisions-32nd-ordinary-session-assembly-african-union-january-2019

2. Geography of intra-African trade and trade agreements

2.1 Who is trading with whom?

In general an assumption can be made that the most prolific exporters within the continent are those that would initially benefit the most from the AfCFTA. Therefore, what is 'geography' of trade within Africa?

Multidimensional scaling (MDS) could provide a graphical representation of intra-African trade. It is a technique that creates a map displaying the relative positions of a number of objects, given only a table of the distances between them. The map may consist of one, two, three, or even more dimensions. The table of distances is known as the proximity matrix.[10] The distances could also be measures of dissimilarity. In this case, the value of export of one African country to another African country is a measure of dissimilarity: The higher the value of trade between two countries, the shorter the 'distance' between the two.

The results are a 'model' since MDS needs to calculate a relative position of a country vis-à-vis all the other countries, and choices need to be made mathematically. Also, the results are presented in two dimensions which limits the 'fitness' of the model compared to the actual data. For this the reason, the number of African countries have been reduced to 32 in order to reach an acceptable 'fitness.' The graph is shown on the next page.

Based on the results, at least two observations can be made:

1) Intra-African trade is predominantly regional. The model reveals the existence of trading blocs, in East Africa, Southern Africa, North Africa and West/Central Africa.
2) South Africa, Nigeria, Morocco, Egypt and to a lesser extent Ghana trade the most with other African countries – these countries appear in the middle of the graph. They would have the ability to take advantage of the tariff liberalization offered under the AfCFTA, given that they already export to other African countries.

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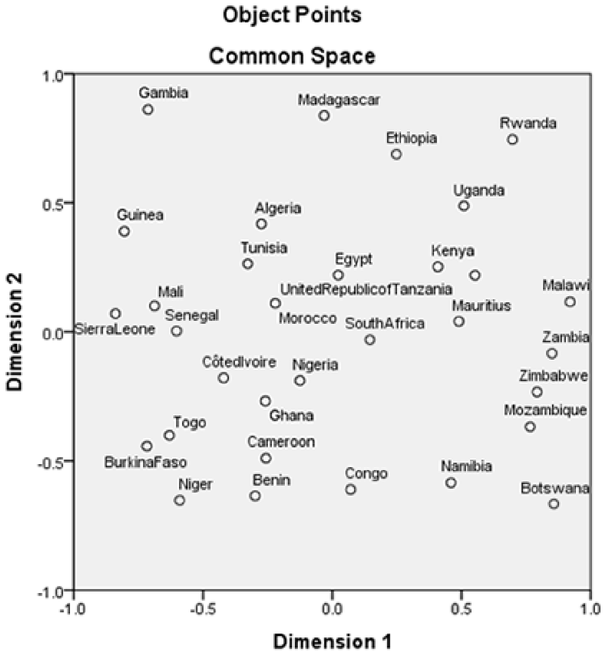
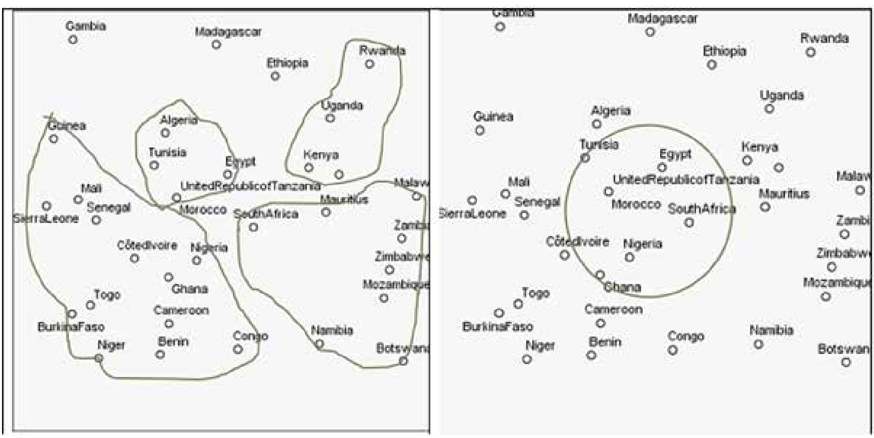
[10] https://ncss-wpengine.netdna-ssl.com/wp-content/themes/ncss/pdf/Procedures/NCSS/Multidimensional_Scaling.pdf

Graph - Geograhy of intra-African trade





Intra-African trade is mostly regional

The countries in the middle of the graph trade the most with all other African countries

2.2 The additionality of AfCFTA to existing liberalisation on the continent

Across Africa, several regions are implementing customs unions and free trade agreements. The most important tariff liberalization agreements on the African continent include:

- Economic Community of West African States (ECOWAS). The Economic Community of West African States (ECOWAS) is made up of fifteen member countries that are located in the Western African region.[11]
- Economic and Monetary Community of Central Africa (CEMAC): Cameroon, Democratic Republic of the Congo, Gabon, Chad, Equatorial Guinea, Central African Republic, Congo.
- The Southern African Customs Union (SACU), a customs union among five countries: Botswana, Eswatini, Lesotho, Namibia, South Africa and
- East African Community (EAC) covers six member states: Burundi, Kenya, Sudan, South Sudan, Tanzania, Uganda. Within the EAC, no import duties are levied on goods originating from EAC.
- Southern Africa Development Community (SADC) FTA. Thirteen out of 15 SADC Member States are part of the Free Trade Area, while Angola and Democratic Republic of Congo remain outside. Comoros was admitted as the 16th SADC member and is expected to implement the FTA as well.[12]
- Common Market for Eastern and Southern Africa (COMESA) FTA. The COMESA FTA was launched in October 2000 to provide duty free and quota free market access to member States on COMESA originating products. At present, there are 16 participating countries: Burundi, Comoros, Djibouti, Democratic Republic of Congo, Egypt, Kenya, Libya, Madagascar, Malawi, Mauritius, Rwanda, Seychelles, Sudan, Uganda, Zambia and Zimbabwe.[13] [14]

Besides this other preferential tariff arrangements, include bilateral trade agreements between Morocco and some West African countries, a bilateral preferential agreement between Zimbabwe and South Africa,[15] the Agadir Agreement between

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[11] ECOWAS Commission, http://www.ecowas.int/member-states/

[12] 'Comoros admitted into SADC', New Era Live Namibia, 22 August 2017, https://www.newera.com.na/2017/08/22/comoros-admitted-into-sadc/

[13] COMESA Secretariat, http://www.comesa.int/sixteen-countries-now-in-free-trade-area/

[14] The Ethiopian Investment Commission mentions COMESA membership, but Ethiopia is not a member to the COMESA FTA, http://www.investethiopia.gov.et/index.php/faq/general-faq/111-uncategorised/faq/general-faq/516-trade-agreements-of-ethiopia.html

[15] Trade, Exports & Investment>> Market Access>> Trade Agreements, the dti, Republic of South Africa, https://www.thedti.gov.za/trade_investment/ited_trade_agreement.jsp

Egypt, Jordan, Morocco and Tunisia, agreements between Tunisia and Algeria, Tunisia and Libya and an agreement between Ethiopia and Sudan. The existence of these agreements and the extent of their implementation or utilization is not always known.

For trading relationships between countries covered by the above listed agreements, the AfCFTA is not likely to add new tariff liberalization. For instance, the AfCFTA will not have great impact on the trade between Nigeria and Ghana (both in ECOWAS), Uganda and Kenya (both in EAC) or Mauritius and South Africa (both in SADC FTA). Only if liberalisation in AfCFTA would be higher than that existing under the existing preferential trading relationship, there might be some changes (e.g. between Mauritius and South Africa under SADC FTA).

The African continent is constituted by 55 countries. If all countries would negotiate a bilateral trade agreement with all other African countries, there would be 1,485 bilateral FTAs (55 x 54 divided by 2). ECOWAS, CEMAC, SACU, EAC, SADC FTA and COMESA FTA are the equivalent of 338 bilateral trade agreements. This still leaves 1,147 bilateral links without an FTA. As mentioned before, there are some other agreements. But it is safe to conclude that full implementation of the AfCFTA is akin to the negotiation of more than 1,000 bilateral FTAs.

Based on current trade data, most intra-African exports are covered by existing FTAs and customs unions. According to UNCTADstat figures, total intra-African exports amounted to USD 62.2 billion in 2016. For about USD 18.4 billion worth of exports (30% of current exports), the AfCFTA would potentially increase such exports, whereas for USD 43.7 billion (70% of current exports) the situation would essentially remain unchanged (see figure below).

Graph - 70% of current intra-African expoerts are covered existing intra-African trade agreements

The Table below shows Top-10 bilateral export relationships (based on the share of exports in total intra-African exports) where substantial additional liberalisation would occur as a result of the AfCFTA. This Top10 is part of the 30% of intra-African exports to countries without an existing FTA. Unsurprisingly, most of these relations are between the major traders on the African countries and are relations where the exporter and importer are in a different RECs, e.g. Nigeria in ECOWAS and Cameroon in CEMAC, South Africa in SACU and Kenya in EAC.

Table - Top-10 Major bilateral export relationships without FTA

Exporter	Importer	Value (USD '000)	% of total intra-African exports
Nigeria	South Africa	1,892,285	3.0%
Ghana	South Africa	1,362,906	2.2%
Angola	South Africa	982,401	1.6%
South Africa	Dem. Rep. of the Congo	782,502	1.3%
South Africa	Angola	562,933	0.9%
South Africa	Kenya	556,610	0.9%
Algeria	Morocco	499,056	0.8%
Mali	South Africa	474,239	0.8%
Nigeria	Cameroon	467,079	0.8%
Egypt	Algeria	464,406	0.7%

Source: calculations based on UNCTADstat

Among East African countries, the share of export going to countries with whom they already have a trade agreement differs.

For several countries the AfCFTA would not appear to be important for increasing existing exports, as most of their exports are destined to countries with whom they have a trade agreement. In East Africa, these countries include Mauritius, Burundi, Uganda, Rwanda, Madagascar and Seychelles. It would be expected that in terms of boosting existing exports, the benefit of the AfCFTA would be muted for these countries, at least in the short term.

On the other hand, for another group of countries, the AfCFTA would potentially boost their existing exports. This include in particular countries in the Horn of Africa, i.e. Djibouti, Ethiopia, Eritrea, Somalia and Sudan.

Table – Additionality of AfCFTA: share of export going to countries with whom country already has an FTA

The higher the share of exports, the lower the additionality of AfCFTA & expected impact (in the short term)

Country in East Africa (exporters)	Exports to countries with whom country does NOT has FTA	Exports to countries with whom country has FTA	Total export to African countries	Share of export going to countries with whom country has FTA
Mauritius	6,859	423,486	430,345	98%
Burundi	588	24,479	25,067	98%
Uganda	39,347	1,257,734	1,297,081	97%
Rwanda	7,976	242,255	250,231	97%
Madagascar	13,847	167,724	181,571	92%
Seychelles	5,036	54,014	59,050	91%
Kenya	363,587	1,837,472	2,201,059	83%
Comoros	451	1,598	2,049	78%
Tanzania	314,037	927,345	1,241,382	75%
Sudan	40,270	13,676	53,946	25%
Djibouti	52,692	6,693	59,385	11%
Somalia	5,300		5,300	0%
Eritrea	8,029		8,029	0%
Ethiopia	684,198		684,198	0%

Note: Values in USD Thousands.

Source: calculations based on trade data from UNCTADstat (for the year 2016)

The story on the import side is similar. The higher the share of exports going to ‘FTA countries,’ the higher the share of imports from ‘FTA countries’ (see Table below). Interestingly, Uganda and Kenya are sourcing relatively little with countries with whom they have FTAs (as compared to exports). This could signal that the AfCFTA has higher potential to increase imports rather than exports for these countries. For Sudan, Tanzania and Comoros, the situation is the other way around (See graph below).

It appears that for Ethiopia, Eritrea and Somalia, all trade (export and imports) with other African countries is non-preferential. In other words, for these countries the AfCFTA has the largest additionality and also the largest expected impact.

Table – Additionality of AfCFTA: share of imports coming countries with whom country already has an FTA

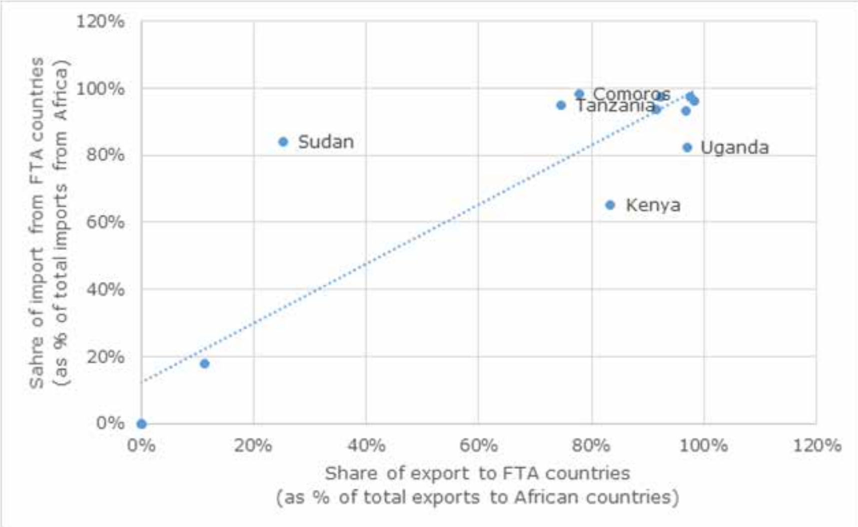
The higher the share of imports, the lower the additionality of AfCFTA & expected impact (in the short term)

Country in East Africa (importers)	**Imports from countries with whom country does NOT has FTA**	**Imports from countries with whom country has FTA**	**Total import from African countries**	**Share of import from countries with whom country has FTA**
Comoros	2,178	130,815	132,993	98%
Burundi	5,058	208,349	213,408	98%
Madagascar	10,041	394,119	404,160	98%
Mauritius 1	9,647	486,179	505,826	96%
United Republic of Tanzania	63,358	1,167,070	1,230,428	95%
Seychelles	7,397	109,845	117,243	94%
Rwanda	36,816	516,010	552,826	93%
Sudan	112,370	597,189	709,559	84%
Uganda	149,771	701,617	851,389	82%
South Sudan	23,868	89,053	112,922	79%
Kenya	640,522	1,201,622	1,842,144	65%
Djibouti	206,313	44,460	250,774	18%
Eritrea	82,350		82,350	0%
Ethiopia	593,907		593,907	0%
Somalia	677,979		677,979	0%

Note: Values in USD Thousands.

Source: calculations based on trade data from UNCTADstat (for the year 2016)

Graph – share import from FTA countries vs share of export to FTA countries



This information could be used to inform the priorities for negotiations under AfCFTA, to decide which country or countries to negotiate with first.

First, preferences under existing FTAs (e.g. COMESA, SADC) could be consolidated within the AfCFTA with relatively little impact. This would have the intended effect of solving the overlap between RECs (see Section 1.3 above). However, in some cases, tariff elimination under AFCFTA might be more ambitious than under existing agreements (See Section 3 below).

Second, as the geography of intra-African trade shows (Section 2.1 above), most intra-African trade is regional. If the objective is to bolster intra-regional trade, trade agreements between neighbouring countries should have the priority. This is also shown by looking at the most important country not covered by an FTA, measured by 2016 export values (see table below). For EAC, the priorities would be to negotiate with DR Congo and Somalia, and after that South Africa (SACU). In the Horn of Africa, a trade agreement with Ethiopia seems important, except in the case of Eritrea (Egypt). Interestingly, in the case of the islands in East Africa, the North African countries might be potential negotiation partners.

It has to be noted that a trade agreement will also increase imports. In the case of the EAC for instance, there are substantial imports from South Africa but no corresponding level of exports – without AfCFTA and without any trade agreement between EAC and Africa. The question is whether the AfCFTA will further reinforce this trend, or reverse it.

Table – Possible priorities for negotiations under AfCFTA based on boosting exports to countries with whom East African countries do currently not have an trade agreement

	Most important country not covered by FTA (export side)	**Most important country not covered by FTA (import side)**	**Possible priority for tariff negotiations under AfCFTA**
Possible implication	High chance that exports will increase with tariff concessions under AfCFTA	High chance that imports will increase with tariff concessions under AfCFTA	
Country in East Africa			
Horn of Africa			
Djibouti	Ethiopia	Ethiopia	Ethiopia
Eritrea	Egypt	Egypt	Egypt
Ethiopia	Somalia	Egypt	Somalia
Sudan	Ethiopia	Ethiopia	Ethiopia
Somalia	Ethiopia	Ethiopia	Ethiopia
EAC			
Kenya	Somalia	South Africa	Somalia
Tanzania	DR Congo	Egypt	DR Congo
Uganda	South Africa	South Africa	South Africa
Rwanda	Ethiopia	South Africa	Ethiopia
Burundi	DR Congo	South Africa	DR Congo
EAC as a whole	DR Congo	South Africa	DR Congo
Islands			
Comoros	Morocco	Morocco	Morocco
Madagascar	Morocco	Morocco	Morocco
Mauritius	Algeria	Morocco	Algeria
Seychelles	Tunisia	Tunisia	Tunisia

3. The AfCFTA Tariff negotiation modalities

3.1 Tariff negotiation modalities: The framework for negotiations

Most elements of the Modalities for Tariff Liberalisation were agreed by September 2017.[16] These modalities provide a framework for negotiations. The most important elements include the following:

- Negotiating parties - who will negotiate? Individual member states or customs unions?
- Categories of products: Countries should assign products to three product groups/lists, namely: 'Non-Sensitive' products, 'Sensitive' products and the 'Exclusion List.'. The difference between 'non-sensitive' and 'sensitive' products is a longer timeframe for implementation for 'sensitive' products. LDCs will enjoy a longer timeframe for implementation.
- Timeframe for implementation. Tariffs on non-sensitive products to be eliminated after five years (non-LDCs) or 10 years (LDCs). Tariffs on sensitive products to be eliminated after 10 years (non-LDCs) or 13 years (LDCs).
- Base rate: The basis for negotiations will be the MFN rate as of entry into force of the AFCFTA (i.e. 2019)

However, there were some outstanding issues, the most important were:

- The size of the non-sensitive product list (in terms of tariff lines)
- The size of sensitive product list (in terms of tariff lines)
- Additional criteria to avoid that countries all tariff lines with imports into the Exclusion List, sometimes referred to as 'anti-concentration clause', or 'double qualification'.
- A group of countries that want additional flexibility (G7, now G6). Ethiopia, Madagascar, Malawi, Sudan, Zambia, and Zimbabwe are part of the G6. This Group was initially termed the 'G7,' but now 'G6' after Djibouti relinquished.
- Treatment of LDCs in the customs union (see Section 3.3(b) below).

[16] TI/CFTA/AMOT/3/TIG/MOD/FINAL, Annex IV - 'Modalities for Continental Free Trade Area on Tariff Negotiations', version 21 September 2017

The table above provides a summary of the level of liberalisation and timeframes for liberalisation.

Table – Level of liberalisation and timeframes for implementation under the AfCFTA

<table>
<tr><th rowspan="2">Product Group</th><th rowspan="2">Level of Ambition for all State Parties</th><th colspan="3">Timeframe for Implementation</th></tr>
<tr><th>Non-LDCs</th><th>LDCs</th><th>Special Needs/G-6</th></tr>
<tr><td>Non-Sensitive Products</td><td>Not less than 90 percent of tariff lines</td><td>5 years</td><td>10 years</td><td>10 years for 85 per cent of tariff lines;

15 years for additional 5 percent of tariff lines (may be phased from year 11 to year 15)</td></tr>
<tr><td rowspan="2">Sensitive Products</td><td rowspan="2">Not more than 7 percent of tariff lines;</td><td>10 years</td><td>13 years</td><td>13 years</td></tr>
<tr><td colspan="3">Liberalisation of sensitive products may commence in year 6, or earlier for those State Parties willing to do so.</td></tr>
<tr><td>Exclusion List</td><td colspan="4">• Not more than 3 percent of tariff lines[17]
• Exclusion list shall at maximum constitute 10 percent of the value of imports from other African countries based on a 3-year reference period (2014-2016 or 2015-2017).
• Subject to a review process after 5 years.</td></tr>
</table>

3.2 Liberalisation under AfCFTA modalities in comparison with other trade agreements between developing countries?

According to the agreed modalities, tariff agreements between African countries under the AfCFTA will eventually liberalize at least 97% tariff lines and 90% of imports at the end of their implementation period. In other words, duties will remain on maximum 3% of tariff lines and 10% of imports.

How does this level of liberalisation compare with other trade agreements between developing countries? To answer this question, data was compiled from the

[17] AU/TI/AfCFTA/NF/14/FINAL/REPORT, Final Report of the Fourteenth Meeting of the African Continental Free Trade Area Negotiating Forum (AfCFTA-NF)

factual presentations of FTAs between developing countries that are notified to the WTO. Each factual presentation usually contains a subsection called “Liberalization of trade and tariff lines” (in the section ‘Provisions on trade in goods’).

In order to arrive at a good benchmark, only FTAs which entered into force in 2007 or later are considered. Also, all parties to the FTA must be developing countries. In the compilation, FTAs with OECD countries (including Chile, Mexico, Korea), Chinese Taipei, Hong Kong and Singapore are not considered. Some exceptions were made, such as the ASEAN-India FTA (which includes Singapore) and the Mexico-Central America FTA.

Both agreements notified under Article XXIV GATT as well as the Enabling Clause were included in the compilation. The Enabling Clause has less strict requirements, among others it does not require tariff liberalisation to take place for ‘substantially all trade.’ With respect to the AfCFTA, there has been agreement that it should comply with Article XXIV.[18]

Results

The results show the share of tariff lines that remain dutiable is higher for agreements notified under the Enabling Clause compared to those under Article XXIV. On average 31.5% for the analysed agreements and around 21% for the most recent agreements for which a factual presentation prepared by the WTO is available. In other words, this amounts to a liberalisation of not more than 80% of tariff lines.

Turning to FTAs notified to WTO under Article XXIV GATT, the share of tariff lines that remain dutiable is on average 6.6% for the analysed agreements. In more recent years this share is lower (2.2% 5.5%). In other words, an average Article XXIV-notified developing country FTA that entered into force in 2007 or later liberalizes 93.4% of tariff lines. For more recent FTAs, i.e. those that entered into force 2012 or later this percentage is even higher (95-97%).

[18] Even through the agreement(s) resulting from the AfCFTA tariff negotiations would comply with Article XXIV GATT, it would be advisable to notify the AfCFTA under the Enabling Clause. This issue is not dealt with as it falls outside the scope of this paper.

Table - Developing country FTAs - Share of tariff lines that remain dutiable (%)

Year of entry into force	Developing country FTAs notified to WTO under Enabling Clause	Developing Country FTAs notified to WTO under Article XXIV GATT	All developing country FTAs notified to WTO
2007	18		18
2008	40.2		40.2
2009	88.3	14.3	43.9
2010	21.2	6.8	19.9
2011	21	10.4	13.9
2012		2.2	2.2
2013		5.5	5.5
2015		3.3	3.3
2016		4.8	4.8
Average for all FTAs	**31.5**	**6.6**	**19.1**

Source: compiled on the basis of WTO Factual Presentations

The share of imports (value) that remain dutiable for an average developing country FTA is 12.1%, i.e. a liberalisation of around 88% in terms of value. In contrast to liberalisation in terms of tariff lines (the number of different goods for which tariffs are eliminated), there is no obvious downward trend in the liberalisation as measured in terms of value.

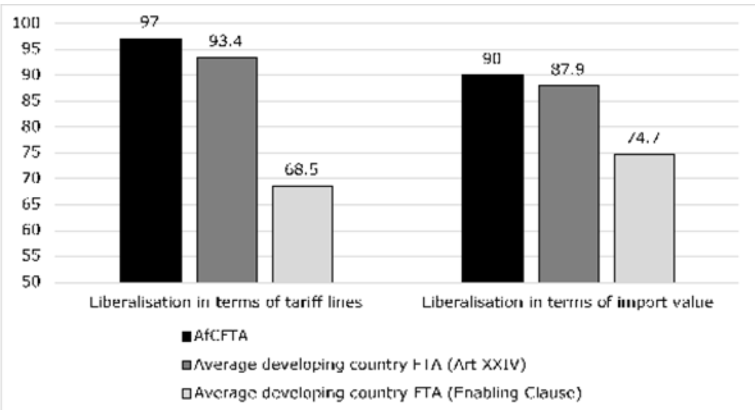
Table - Developing country FTAs - Share of imports (value) that remain dutiable (%)

Year of entry into force	Developing country FTAs notified to WTO under Enabling Clause	Developing Country FTAs notified to WTO under Article XXIV GATT	All developing country FTAs notified to WTO
2007	8.8		8.8
2008	50.4		50.4
2009	61.8	18.1	35.6
2010	22.4	5	20.8
2011	30.7	7.8	15.4
2012		4.3	4.3
2013		7.8	7.8
2015		16.8	16.8
2016		13.4	13.4
Average for all FTAs	**25.3**	**12.1**	**18.7**

Source: compiled on the basis of WTO Factual Presentations

In conclusion, based on the levels of liberalisation of implemented developing country FTAs, the AfCFTA tariff modalities are quite ambitious.

Graph – Tariff liberalisation under AfCFTA tariff modalities and developing country FTAs



3.3 Implementation of the modalities: some challenges

The January 2019 AU Summit requested the African Union Ministers responsible for trade to submit the Schedules of Tariff Concessions in line with agreed modalities to the July 2019 summit.[19] Implementation of the modalities could involve up to 200 tariff negotiations, implying that it would take more time to finalize the tariff schedules. It also implies that the adoption of the Schedules of Tariff Concessions is not a one-time event, but outcomes of tariff negotiations will need to be adopted in stages. Besides that, the issue of treatment of LDCs in customs unions has not been fully resolved.

a) Permutations – a bewildering complexity

The tariff modalities state the following about the negotiating parties:

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

11. Member States that belong to a Customs Union shall negotiate collectively." [20]

The three functioning customs union on the African continent include ECOWAS, EAC and SACU. CEMAC has not yet pronounced itself whether its member states will negotiate collectively or as individual member states. All the other countries would have to negotiate individually.

If this is to be executed to the letter, the number of negotiations will be enormous. In a scenario where ECOWAS, EAC and SACU negotiate collectively and all the other countries (23) negotiate individually, the implementation of the modalities would be 409 tariff negotiations. If CEMAC as a six-country grouping would negotiate collectively the number would drop to 213 tariff negotiations, which is still a very high number (see tables below).

[19] https://au.int/en/pressreleases/20190211/key-decisions-32nd-ordinary-session-assembly-african-union-january-2019

[20] TI/CFTA/AMOT/3/TIG/MOD/FINAL, Annex IV - 'Modalities for Continental Free Trade Area on Tariff Negotiations', version 21 September 2017

Number of tariff negotiations

Scenario 1: ECOWAS, EAC and SACU negotiate collectively, the rest individually

Entity	Number of States
Africa	55
ECOWAS	15
EAC	6
SACU	5
Subtotal	26
Other countries negotiating as individual States	29
Number of negotiations	Links between CU and CU – 3 x 2 = 6 Links between CU and MS - 29 x 3 = 87 Links between MS and MS – 29 x (28-3) = 725 Total number of negotiations = 818 / 2 = **409**

Note: the total number of links is equal to 55 x 54 (2,970), but a bilateral negotiation has two parties. So if all African countries would negotiate individually, the maximum number of negotiations would be 55 x 54 / 2 = 1,485.

Scenario 2: ECOWAS, EAC, SACU and CEMAC negotiate collectively, the rest individually

Entity	Number of States
Africa	55
ECOWAS	15
EAC	6
SACU	5
CEMAC (not certain)	6
Subtotal	32
Other countries negotiating as individual States	23
Number of negotiations	Links between CU and CU – 4 x 3 = 12 Links between CUs and MS - 23 x 4 = 92 Links between MS and MS 23 x (18-4) = 322 Total nr of negotiations = 426 / 2 = **213**

Complexity could be reduced by individual States making common offers:[21]

- Islands nations in East Africa could consider making a common offer (Seychelles, Comoros, Madagascar, Mauritius). They have roughly the same productive structures and might have common interests.
- Mauritania is considering to align itself with an ECOWAS offer
- In Central Africa, a possibility could be an offer at the level of the Economic Community of Central African States (ECCAS-CEEAC). ECCAS is one of the eight Regional Economic Communities (RECs) designated by the African Union as pillars for the implementation of the African Economic Community. The ECCAS Treaty also foresees further regional trade integration among its members, and some ECCAS trade instruments have been formulated, including ECCAS rules and certificates of origin, approval procedures and dossiers for the preferential regime, compensatory mechanisms, treatment of re-exports, and the goods in international transit regime.[22] However, ECCAS encompasses some States that are party to the EAC (Burundi, Rwanda).

However, making common offers should not detract from sovereign decision of the involved parties and should take into account the impact of liberalisation of local industries – one country's list of sensitive products do not necessarily overlap with those of another country. Safeguarding national interests could be more difficult in a regional setting. Also, coordination between countries within a grouping will take efforts, political will and resources. On the other hand, depending on the trade flows of customs union members as a collective, liberalization under a collective regional offer might result in a lower level of liberalization for a particular country.

In any case, even if some individual States make common offers or align themselves with RECs, the task ahead is gargantuan. Such high number of negotiations would drain a lot of resources from often under-capacitated trade ministries. Furthermore, before an offer could even be submitted to a counterparty the current MFN tariffs and trade data needs to be collected. While MFN tariffs are relatively easy to obtain from customs, obtaining trade data and combining this with the MFN tariffs is

[21] Another possible way of dealing with the high number of negotiations is to present 'take it or leave it' offers that are made in accordance with the modalities. As such, they should be accepted by the other side. However, such strategy might not work as 'automatic acceptance' of offers by counterparties is not a feature of the modalities. Furthermore, such automatic acceptance might not be desirable for the country making the offer if the products proposed to be sensitive or excluded by the counterparty are not known before such acceptance. However, continued non-acceptance of offers made by parties that are otherwise meeting the requirements of the modalities should be monitored. This assumes that the AU Secretariat can monitor offers made.

[22] WTO document WT/TPR/S/285 of 24 June 2013, 'Trade Policy Review Report by the Secretariat – Countries of the Central African Economic and Monetary Community (CEMAC)', page 27, https://www.wto.org/english/tratop_e/tpr_e/s285_e.pdf

less straightforward:

- The MFN tariffs of 2019 might be in a different version of the Harmonized System as the trade data (The Harmonized System is a generally accepted classification of tradeable goods).
- The trade data for 2014-2016 or 2015-2017 might not be available for all the years or is incomplete
- The trade data for 2014-2016 or 2015-2017 might be expressed in different versions of the Harmonized System across the years.
- The trade data might only be available at a higher level ('6 digit') and not entirely correspond with the national tariff line level.

In addition to this, for each of the 250+ tariff negotiations (under Scenario 2), the import values will be different. For instance, an offer by Morocco to EAC will be based on the imports of Morocco from EAC, and not on the basis of imports from all African countries.

Given these practicalities, it is proposed that the AU Secretariat should assume a more active role in assisting Member States in preparing and submitting offers. As a first step, the AU Secretariat should collect data on tariffs and trade from the Member States. Furthermore, the use of an on-line tool or website to support the tariff negotiations should be considered. Provided all the information is made available and processed for use on a website (a task that can be quite complex), the preparation and negotiations of offers could be greatly facilitated. Model offers could even be generated automatically based on various indicators (e.g. minimization of tariff revenue loss or export potential). It would also give the AU Secretariat a tool to monitor offers made that are not accepted by a counterparty – a situation that likely will happen with offers made by smaller countries vis-a-vis larger countries.

Such a website should be available only for approved officials from AU Member States. However, it should be complemented by a public section where input from CSOs and other stakeholders on some of the issues could be gathered, and where the relevant decisions and documentation on the AfCFTA are published.

b) Treatment of LDCs in customs unions

Under the AfCFTA tariff negotiation modalities, the difference in treatment between LDCs and non-LDCs is the transition period for the elimination of tariffs.

Customs unions will negotiate collectively and usually have common tariffs for imports from countries outside the customs union. If Kenya (non-LDC) would apply a different (faster) timeframe for implementation than Tanzania (LDC), the tariffs levied by Kenya on imports from other African countries would be lower than Tanzania's during the transition period. This might lead to diversion of imports via Mombasa which find their way throughout the EAC, including Tanzania.

There are two customs unions, where the majority of its members are LDCs, namely ECOWAS and EAC. As of February 2019, ECOWAS was considering to offer a longer transition period which takes into account the share of LDCs in ECOWAS. Discussions are also on-going within EAC. In fact, all 6 members of the EAC are LDC with the exception of Kenya.

On the issue of the treatment of LDCs in customs unions, the 14th AfCFTA Negotiating Forum decided in December 2018 that “Customs Unions are to find a solution, particularly at the point of negotiation of tariff concessions, in accordance with the adopted Modalities.” This decision appeared to delay a solution on this matter to the actual negotiations. An official from Morocco remarked that it would not agree to a longer implementation period for Nigeria, as it considered that his country is at the same level of development as ????. But in such case, a country such as The Gambia could not avail of the flexibilities afforded to it under the AfCFTA tariff negotiation modalities.

In the case of EAC, the case for LDC treatment for all countries, including Kenya is stronger than for ECOWAS. EAC should argue for LDC treatment as a principle. Down the line it could show flexibility in tariff negotiations where the imports by Kenya (non-LDCs) from the negotiation partner is more than a certain percentage of total imports from that negotiation partner (e.g. 50%). Thus, depending on trade data, a choice could be made for either LDC or non-LDC treatment.

4. Expected economic impact of AfCFTA

4.1 Overall impact on Africa

While the AfCFTA itself has been signed and is being ratified by an increasing number of African countries, the Parties have yet to negotiate the tariff concessions under the AfCFTA. Therefore, impacts can only be estimated on the basis of models. The most often used type is the so-called Computable General Equilibrium Model (CGE).

The CGE simulations that have been employed, generally paint a rosy picture of the AfCFTA. Indicators such as GDP, employment and intra-African trade would increase for the continent.

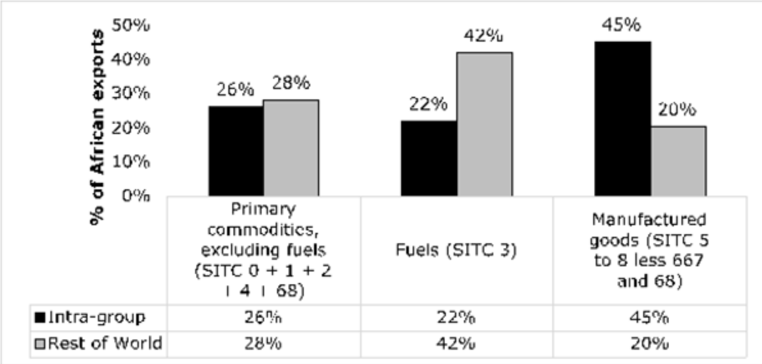
Some headline Africa-wide results include the following:

- GDP would grow by 0.66-0.97 per cent and employment by 0.82-1.17 per cent (Saygili, Peters, and Knebel (2018))
- Real wages would increase, and increase more for ‘unskilled’ labourers (0.74 percent in agriculture, 0.8% in non-agricultural sectors) compared to ‘skilled’ labourers (0.54 per cent (Mevel and Karingi, 2012)
- Growth in intra-African trade is estimated at 24 to 33 percent (Saygili et al., 2018). There appears to be consensus that the share of intra-African trade would not double within the next 10 years as wished by AU member states. This finding prompted Mevel and Karingi (2012) to argue for measures complementary to tariff elimination.

The largest employment growth rates are found in manufacturing industry followed by some services and agriculture subsectors (Saygili et al., 2018). As intra-African trade has a higher skill and technology content than Africa’s trade with others, the AfCFTA can improve diversification, and the industrial product and technology content of AU member states’ exports. In that context, liberalisation of trade within the African continent has merits.

Nonetheless, studies point out that there are various short-term losses, in particular tariff revenue losses. The presumption is often that the long-term benefits are greater than the short-term losses and other adjustment costs. According to Saygili et al. (2018) tariff revenue loss would be equivalent to between 7.2 per cent (FTA with ‘Special Product Categorization’) and 9.1 per cent of current revenues (a ‘full FTA’). The table below shows the various components of adjustment costs.

Graph - Structure of Africa's exports to its internal market vs Rest of World (2015-2017)



Source: UNCTADStat (http://unctadstat.unctad.org/), Table 'Merchandise: Intra-trade and extra-trade of country groups by product, annual', using data from the years 2015 to 2017. Note: SITC stands for Standard International Trade Classification.

Table - Components of adjustment cost

Private adjustment costs	Labour	• Unemployment • Lower wage during transition • Obsolescence of skills • Costs for (re)training • Health care costs • Personal costs (e.g. mental suffering)
	Capital	• Underutilized capital • Obsolete machines or buildings • Transition cost of shifting capital to other activities • Investments to become an exporter
Public sector adjustment costs		• Lower tax revenue • Social safety net spending • Implementation costs of trade reform

Source: Adapted from Francois, Jansen, Peters (2011), 'Trade adjustment costs and assistance: The Labour market dynamics' at page 6.

Trade liberalization can have a negative impact on labour in the short and medium term, especially if these sectors were protected. Labour mobility across sectors is limited in developing countries (Goldberg and Pavcnik (2004)). In other words, tariff elimination under the AfCFTA might cause unemployment and lower wages in certain sectors and involve increased health care costs and costs for retraining. This may create social tensions and problems unless compensatory or 'flanking' measures are set in place. Besides labour costs, other adjustment costs can include the lower utilization of productive assets and the need to make new investments in order to respond to new competitive conditions. Adjustment costs are difficult to model, among others due to the lack of data, and therefore the results of CGE simulations, especially for the long term, need to be interpreted with caution. As the famous British economics J.M. Keynes once wrote: "(the).. long run is a misleading guide to current affairs. In the long run we are all dead. Economists set themselves too easy, too useless a task, if in tempestuous seasons they can only tell us, that when the storm is long past, the ocean is flat again."[23]

AfCFTA adjustment/compensation facility. While tariff elimination under the AfCFTA is expected to be generally positive and its negative impact muted due to relatively low levels of intra-African trade, any trade agreement generates distributional effects within countries and across countries. The AfCFTA will generate winners and losers.

It would be important to monitor the implementation of the agreement and provide adjustment assistance and/or compensate countries that are the 'losers' from this process. Tariff revenue losses incurred by elimination on tariffs on imports from other African countries might not always be recouped, either through introduction of other taxes or increased economic activity. In such scenario, there is a case for a facility at the African level to compensate the 'losing' countries or help them adjust.

Within African RECs, broader regional integration support programmes have been implemented that go beyond compensation. Compensation to Rwanda and Burundi for the adoption of the EAC Customs Union and Common External Tariff was implemented by COMESA through the Regional Integration Support Mechanism (RISM) programme, which also supported infrastructure development and broader adjustment objectives. In CEMAC, fiscal compensation is allocated 40% of funds from the Fonds de Développement de la Communauté (FODEC), while 60% is to target regional integration projects (including infrastructure). The ECOWAS Regional Development Fund (ERDF) has been responsible for lending to support regional infrastructure projects as well as fiscal compensation.

[23] https://en.wikiquote.org/wiki/John_Maynard_Keynes

4.2 Impact on East African countries

This Section examines the available results that are specific to East African countries, in terms of wages, real income/GDP, tariff revenue losses, impact on exports and imports, distributional impacts within countries (income, gender), source of welfare by country, and last but not least, production outcomes.

It must be noted that the results are sensitive to the model, assumptions, baseline data and scenarios used. Nonetheless, if results of one study are confirmed by another study, one could have more confidence in the nature and extent of possible impacts of the AfCTFA.

i) Wages

The creation of employment is very important, as a lack of employment opportunities can stoke unrest and instigate political instability. In CGE models, an indicator for employment opportunities is the (positive) change in wages.

Across East African countries, wages generally would appear to increase, except for unskilled labour in agriculture for the country grouping 'rest of Eastern Africa.' Skilled real wages in Ethiopia would also appear to decrease on account of the AfCFTA. According to Mevel and Karingi (2012), this would become positive if tariff liberalization would be accompanied by trade facilitation measures (+1.83% for Ethiopia, +0.40% for 'rest of Eastern Africa').[24]

Compared with the African average, wages of unskilled as well as skilled labourers in Mauritius, Tanzania and Uganda would grow faster (except for unskilled labour in agriculture in the case of Uganda). For other East African countries, wage growth on account of tariff liberalization under the CFTA would be lower compared to the African average.

These results generate some discomfort. The country grouping 'rest of Eastern Africa' covers many countries, including those in the Horn of Africa, Kenya and the islands. Furthermore, it can be assumed that most people are considered 'unskilled' workers in agriculture, as agriculture is often the most important occupancy to provide for livelihoods. Thus, more analysis is called for countries in East Africa in order to have more indications about the impacts of the AfCFTA on labour across East Africa, which should also identify or explain the reason for projected wage/employment declines.

[24] Ibid, Annex 12 at page 44.

Real wages by main qualifications and main sectors of activity (Changes in % as compared to the baseline scenario)

Country	Unskilled real wages in agriculture	Unskilled real wages in non-agricultural sectors	Skilled wages
Ethiopia	1.18	0.25	-0.45
Madagascar	0.20	0.09	0.17
Mauritius	3.33	1.97	0.99
Tanzania	1.13	1.17	1.55
Uganda	0.48	0.91	0.82
Rest of Eastern Africa	-0.13	0.47	0.40
Africa (average)	**0.74**	**0.8**	**0.54**

Source: Mevel and Karingi (2012)

ii) Real income / GDP

According to Mevel and Karingi (2012), the AfCFTA would have a negative impact on real income in Mauritius and the rest of East Africa, mirroring partly the results for wages (with respect to the 'rest of East Africa'). Jensen and Sandrey (2015) expect positive impacts for all countries in East Africa, with small changes for Mauritius, Madagascar and the rest of East Africa. Both studies agree that the most positive impact would be in Uganda.

Country	Real income (%) (Mevel & Karingi, 2012)	Real GDP (%) (Jensen & Sandrey, 2015)
Kenya	n/a	1.99
Ethiopia	0.3	0.36
Madagascar	0.1	0.00
Mauritius	-0.8	0.25
Tanzania	0.3	0.62
Uganda	0.4	2.15
Rwanda	n/a	1.54
Rest of Eastern Africa	-0.2	0.05

iii) Tariff Revenue Losses

Tariff revenue losses are an important indicator, especially in countries that depend a lot on tariffs as a source of government revenue.

According to three studies, Tanzania appears to face the largest tariff revenue losses, in relative terms (as share of total tariff revenues) as well as absolute figures (See table below). Yet, a Tanzania-specific study by the United Nations Economic Commission for Africa found that the country's tariff revenue loss would range between -7.6% and -13.8%, depending on the scenario. From the study it can be implied that the higher value of 13.8% would apply in the case of 100% tariff liberalization, as this scenario was among the three modelled.

Table – Estimated tariff revenue losses for East African countries

Country	Tariff Revenues (%) (Mevel & Karingi, 2012)	Sandrey and Jensen (2016)	Mureverwi (2016)
Kenya	n/a	USD 416 mln	USD 426 mln
Ethiopia	-10.8	USD 165 mln	USD 171 mln
Madagascar	-7.5	USD 3 mln	n/a
Mauritius	-18.6	USD 6 mln	n/a
Tanzania	-36.2	USD 445 mln	USD 465 mln
Uganda	-13.1	USD 85 mln	USD 88 mln
Rwanda	n/a	USD 3 mln	USD 5 mln
Rest of Eastern Africa	-14.7	USD 273 mln	n/a

The tariff revenue loss figures from the mentioned studies are upper bound estimates as these are the expected results for 100% tariff elimination. In practice, countries are more likely to shield tariff revenue generating products from liberalisation and will include them in the exclusion list.

It is unclear why there are such large differences in the tariff revenue loss estimates for Tanzania. It is likely caused by the assumed tariff treatment of sugar and the trade involved.

More research is needed to estimate tariff revenue losses under AfCFTA for individual East African countries.

iv) Impact on exports and imports

A study by Chauvin, Ramos, and Porto (2016) has specific figures for six sub-Saharan countries, of which two are in Eastern Africa: Burkina Faso, Cameroon, Cote d'Ivoire, Ethiopia, Madagascar and Nigeria

Table – Increases in exports/imports (%) for Ethiopia and Madagascar

Country in East Africa	Increase in exports/imports (%)	Scenario		
		Elimination of all tariffs in agriculture	Elimination of all tariffs	Elimination of tariffs + non-tariff measures
Ethiopia	Exports	4.58	6.64	10.92
	Imports	4.16	6.04	9.95
Madagascar	Exports	0.38	0.74	3.93
	Imports	0.36	0.71	6.68

Source: Chauvin et al. (2016)

Ethiopia will increase its imports and export as a consequence of the implementation of the AfCFTA, with exports grows faster than imports (in relative terms). This result is also confirmed by Jensen and Sandrey (2015). However, this does not necessarily mean that it would run an overall trade surplus with other African countries. Under AfCFTA, trade would particularly increase with Maghreb and Egypt.

Madagascar displays a relatively limited response in trade in the long run indicating that the implementation of the AfCFTA would not lead to significant changes in bilateral trade relations of Madagascar. This result is also confirmed by Jensen and Sandrey (2015). Overall the trade impacts of the CFTA appear very mild for Madagascar.

Table – Increases in exports/imports (%) for East African countries

Ctry	Exports %	Imports %
Kenya	5.7	4.5
Ethiopia	3.6	2.5
Rest of East Africa	2.0	1.4
Tanzania	3.7	3.2
Madagascar	0.2	0.2
Mauritius	0.9	0.9
Uganda	4.3	6.4
Rwanda	10.1	13.8

Source: Jensen and Sandrey (2015)

One recent World Bank study, using the partial equilibrium model Tariff Reform Impact Simulation Tool (TRIST), shows that the short-term impacts on imports is small for most countries. For East African countries for which customs data (revenue collected by product) is available, import increases between 0 to 1% on account of the AfCFTA are projected. This shows that while all economists agree that import will increase with the AfCFTA, the methodology, baseline data and assumptions underlying simulations have a great impact on the magnitude of such import growth.

Table: Increases in imports (%)

Country in East Africa	Scenario	
	Tariff removed for 90% of tariff lines and 90% of intra-regional imports	Full liberalization
Burundi	0.4	1.0
Ethiopia	0.2	0.3
Mauritius	0.0	0.04
Uganda	0.2	0.5

Source: Arenes and Vnukova (2019)

v) Distributional impacts within countries (income groups, gender)

In Ethiopia, the CFTA appears to be pro-rich: The gains for the poor will be lower than the gains for the richest households. Both female-headed and male-headed households benefit from CFTA, with a slight bias in favour of female-headed households. The gains are larger for urban households compared to rural households. In Madagascar, the results do not indicate that the CFTA would be distinctively 'pro-poor' or 'pro-rich.' As in Ethiopia, the gains of CFTA will be larger for urban households compared to rural households. (Chauvin et al., 2016)

vi) Contribution to welfare by country

In CGE models such as GTAP[25], welfare is a constructed measure, different from GDP or income, which estimated sums the gains and losses of the following in a monetary amount:[26]

- Allocative Efficiency: Reallocation of resources from less to more productive uses.
- Labour: The consequence of changes in the employment of the labour force due to changes in the real wage.

Table: What are the sources of the largest gains and losses in welfare if tariffs are eliminated with African countries?

Country	Largest gains	Large Losses projected
Kenya	South Africa, Nigeria	Egypt
Tanzania	South Africa, Angola-DRC	
Rwanda	South Africa, Rest of Africa	
Uganda	South Africa, Nigeria	
Ethiopia	Kenya, Egypt	
Madagascar	Morocco	
Mauritius	South Africa	
Rest of East Africa	South Africa, Nigeria, Namibia	

Source: Jensen and Sandrey (2015), table 2 at page 22.

[25] GTAP stands for Global Trade Analysis Project (GTAP), see https://www.gtap.agecon.purdue.edu/

[26] Welfare Decomposition of the Continental Free Trade Area, Selected Paper for Presentation at the 19th Conference on Global Economic Analysis, Washington DC, 15-17 June, 2016, Brian Mureverwi

- Capital Accumulation: The consequences of changes in the stock of capital due to changes in net investment.
- Terms of Trade: Consequence of changing export and import prices facing a country
- Tariff Revenue

Jensen and Sandrey (2015) provide estimates for a range of East African countries and also provide information about the source of gains and losses in welfare. In other words, which country causes projected gains and losses in welfare. Such information could be used to prioritize tariff negotiations.

For the EAC, the first priority would be to explore tariff negotiations with SACU. With respect to Egypt, there appears to be mixed results for countries within the EAC. For Kenya, tariff-free trade with Egypt would lead to country-wide welfare losses, but for Tanzania it is projected to bring welfare gain. Further down the priority list would be negotiations with Nigeria (or ECOWAS) and Angola/DRC.

For Madagascar, the results seem to suggest that it should consider negotiations with Morocco. This result is line with the analysis under Section 2.2 above.

For Mauritius, the results seem to suggest that it should prioritize South Africa / SACU. It is already within the SADC FTA, but these results seem to suggest that further liberalization could lead to gains for Mauritius.

vii) Production outcomes

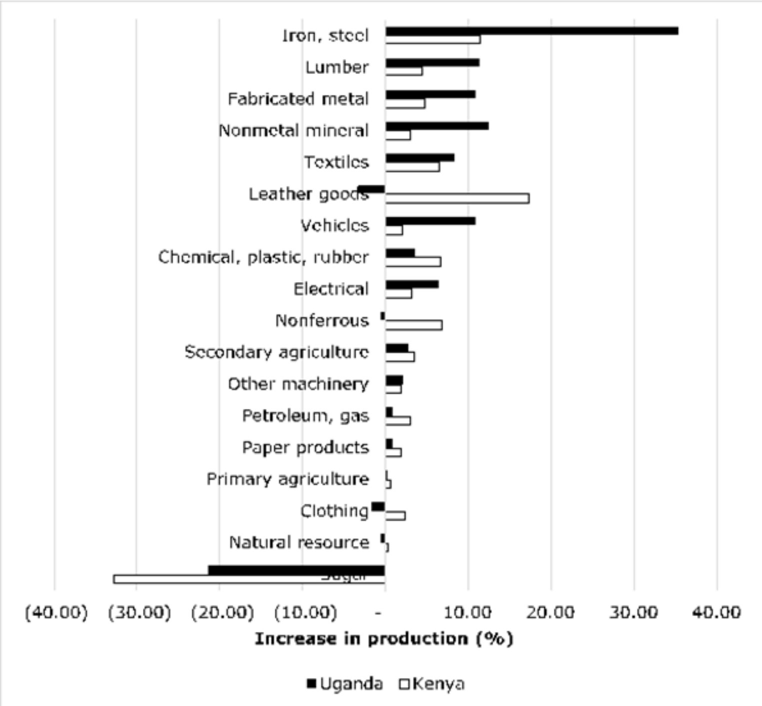
For Kenya and Uganda, which could be taken as a proxy for the EAC, tariff elimination for many manufactured products would appear to lead to increases in production. This includes sectors such iron/steel, lumber, fabricated metal, non-metal mineral, textiles, leather goods and vehicles. On the other hand, tariff elimination for clothing, paper products and ‘other machinery’ might lead to decline in production or lower production increases.

Sugar appears to be a sector that results in significant gains to South Africa and in significant losses for Kenya and Uganda, in terms of production. At the same time, the import of cheaper sugar is calculated to be beneficial for consumers and sugar-consuming industries.

The EAC should exclude sugar from liberalization if it wants to maintain production capacity and the employment directly or indirectly related to the production of sugar. With respect to leather goods, EAC members should probably tread carefully.

In the case of Ethiopia, Chauvin et al. (2016) found that export shares of meat and livestock would increase, while that of cereals would fall. In the case of imports, the pattern would be modified slightly with a greater participation of energy and textiles.

Graph - Changes in production in % (Kenya and Uganda)



Overall the agricultural sector in Ethiopia would benefit from the AfCFTA, but the vegetable oil and fats value-added sector would be reduced. The value added in manufactures would be negatively affected by the AfCFTA due to increase in competition, particularly when trade facilitation measures are implemented.

In the case of Madagascar, the introduction of trade facilitation measures would facilitate imports more than exports, which could lead to increasing trade deficits in the long run. The AfCFTA will likely enable Madagascar to participate more in regional textiles and clothing value chains, as both exports and imports of products in this sector are projected to increase with the AfCFTA.

Table - Increase in value added (%) in the agro-food and manufacturing sectors of Ethiopia and Madagascar

Country	Increase in value added (%)	Scenario		
		Elimination of tariffs in agriculture	Elimination of all tariffs	Elimination of all tariffs +non-tariff measures
Ethiopia	Agrofood sector	0.31	0.20	0.22
	Manufacturing sector	-3.66	-3.66	-10.46
Madagascar	Agrofood sector	0.04	0.03	-0.19
	Manufacturing sector	0.02	0.04	0.36

Source: Chauvin et al. (2016)

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5. Some legal issues with the AfCTA

5.1 Relationship between AfCFTA and African regional trade agreements

Article 20 of the Agreement establishing the AfCFTA regulates the relationship with the RECs:

Article 20
Conflict and Inconsistency with Regional Agreements

1. In the event of any inconsistency between this Agreement and any regional agreement, this Agreement shall prevail to the extent of the specific inconsistency, except as otherwise provided in this Agreement.

2. Notwithstanding the provisions of Paragraph 1 of this Article, State Parties that are members of other regional economic communities, regional trading arrangements and custom unions, which have attained among themselves higher levels of regional integration than under this Agreement, shall maintain such higher levels among themselves.

The implication of the first paragraph is that, in case of inconsistencies, the provisions of the AfCFTA will apply. Nevertheless, the second paragraph provides for an exemption from this general rule in cases of 'higher levels of regional integration' for members of 'regional economic communities, regional trading arrangements and custom unions.'

How would this function in the area of tariffs? It would mean that a tariff eliminated for a product under an existing agreement will apply regardless of what is agreed in the AfCFTA tariff negotiations. This also includes the associated phase out periods (see table below).

Tariff line liberalized under existing agreement between Parties	Tariff line liberalized under AfCFTA	Applicable tariff?
Yes	Yes	As per AfCFTA, with transition period as per existing agreement (otherwise the AfCFTA would be method to delay implementation of already agreed tariff concessions)
Yes	No	As per existing agreement
No	No	MFN
No	Yes	As per AfCFTA

In order to reduce complexity, it would be best to collapse the preferences under existing agreements into the AfCFTA. For example, in the case of Tanzania, which is the only EAC country that is member of the SADC FTA, it would be advisable that the tariff lines liberalized under SADC FTA would be part of the EAC offer to other SADC FTA countries. If that is not the case, Tanzania could effectively be liberalizing more than what is required under the modalities, as it would have to provide preferences under AfCFTA as well as those under existing agreements which are not agreed under AfCFTA.

5.2 Relationship with Tripartite FTA

In 2012, the general thinking was that the Tripartite FTA would have been operational before the African Continental Free Trade Area. At the same time, a Tripartite-like FTA on the other side of the continent, e.g. between West, Central and/or North Africa had not materialized – it was never realistic to expect such agreement to emerge in a time span of 2-3 years while parallel negotiations for an Africa-wide FTA were on-going.

Now as of 2019 it appears that African CFTA is running ahead of the Tripartite FTA, which has not yet entered into force. As of beginning of 2019, only four countries have ratified the Tripartite FTA - Kenya, Egypt, Uganda and South Africa. So far, it appears that the tariff offer between EAC and Egypt is (almost) concluded and there have been several rounds of negotiations between EAC and SACU/South Africa (see also table below). Any outcome of tariff negotiations under the Tripartite umbrella can only take effect if all concerned Parties ratify the agreement, which in practice means that all members of the EAC or SACU must ratify the agreement.

Since the Tripartite FTA has not yet entered into force yet and most, if not all, tariff negotiations under the Tripartite FTA have not yet been concluded (except possibly the negotiation between Egypt and EAC) one could argue that other negotiations could commence or continue under the framework of the AfCFTA.

Table - Progress in tariff negotiations under Tripartite FTA (June 2018)

Country	Progress in tariff negotiations under Tripartite FTA
Egypt	Reported that negotiations with the EAC have been concluded. The negotiations with SACU were at an advanced stage. With regard to the other non-FTA countries, Egypt will offer 100% based on reciprocity and was awaiting responses from those countries.
DRC	Preparing its offer based on the COMESA acquis and on the basis of reciprocity.
EAC	Reported that tariff negotiations with Egypt were concluded & called upon other non-FTA countries to engage with in order to conclude tariff negotiations.
SACU	Confirmed that the negotiations with the EAC are at an advanced stage. Tariff offers have been exchanged with Egypt. SACU is ready to negotiate with other non-SADC TFTA countries on the basis of mutual exchange of offers.
Madagascar	Reported that they will align themselves to the positions of Seychelles and Mauritius.
Malawi	Informed the meeting that it was offering the COMESA and SADC acquis to FTA countries.
Mauritius	Reported that it had already made its offer on the basis of acquis; and 90% trade liberalization to non-FTA countries and was waiting for a response from them
Seychelles	Submitted its offers and was awaiting responses from the three non-FTA countries.
Sudan	About to complete preparing its offers which will soon be exchanged with non-COMESA Member/Partner States.
Zambia	Already submitted its offer to the TTF, which is based on the COMESA and SADC acquis.
Zimbabwe	Reported that it was developing its tariff offers based on the acquis in COMESA and SADC

Source: Report of the Seventh Meeting of the Tripartite Sectoral Ministerial Committee for Trade, Customs, Finance, Economic Matters and Home/Internal Affairs, June 2018

5.3 Trade agreements with non-African countries and MFN

Article 37 of the Treaty establishing the African Economic Community, also referred to as the Abuja Treaty[27] makes provision for African countries to provide a tariff preference to a non-African country, such tariff preference must be provided to all African countries:

Article 37 - Most Favoured Nation Treatment

1. Member States shall accord one another, in relation to intra-community trade, the most-favoured-nation treatment. In no case shall tariff concessions granted to a third State pursuant to an agreement with a Member State be more favourable than those applicable pursuant of this Treaty.
2. The text of the agreements referred to in Paragraph 1 of this Article shall be forwarded by the Member States parties thereto, through the Secretary-General, to all the other Member States for their information.
3. No agreement between a Member State and a third State, under which tariff concessions are granted, shall be incompatible with the obligations arising out of this Treaty.

This legal commitment was also incorporated as one of the principles for the AfCFTA negotiations under MFN treatment, agreed by Ministers in 2016.[28]

"Member States shall accord one another, in relation to intra-community trade, the most favoured nation treatment. Any more favourable trade concession accorded to third parties shall be granted to other Member States."

Strict application of this rule would be difficult for various countries. For instance, Tunisia and Egypt have liberalized all their imports from Jordan, a third/non-African country (see table below). This implies that according to Article 37.1 of the Abuja Treaty, Egypt and Tunisia must give duty free access to imports from all African countries.

[27] The text of the Abuja Treaty can be retrieved at https://www.wipo.int/edocs/lexdocs/treaties/en/aec/trt_aec.pdf
[28] Report of the meeting of African Union Ministers of Trade (24 May 2016), Annex III, 'Definitions for the Continental Free Trade Area (CFTA) Negotiations Guiding Principles

Table - Share of tariff lines and imports that remain dutiable for the three African countries party to the Agadir Agreement

Country	Partner (Country where imports originate)	Share of tariff lines that remain dutiable (%)	Share of imports (value) that remains dutiable (%)
Tunisia	Egypt	0	0
Tunisia	Jordan	0	0
Tunisia	Morocco	0	0
Morocco	Tunisia	8.7	2.7
Morocco	Jordan	8.7	2.2
Morocco	Egypt	8.7	2.4
Egypt	Jordan	0	0
Egypt	Morocco	0	0
Egypt	Tunisia	0	0

Against this backdrop, the Agreement establishing the AfCFTA contains an article titled 'Continental Preferences' which essentially reduced the legal commitment contained in Article 37.1 of the Abuja Treaty:

CONTINENTAL PREFERENCES Article 19 - Continental Preferences

1. Following the entry into force of this Agreement, State Parties shall accord each other preferences, on a reciprocal basis, that are not less favourable than those given to third parties when implementing this Agreement.

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

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

The implications of Article 19 are

- The MFN clause only applies to future trade agreements between African and non-African countries. This means the MFN commitment does not apply to the Agadir Agreement, but would apply to countries that are party to an Economic Partnership Agreement (EPA) with the EU that will enter into force after the AfCFTA enters into force.
- The extension of preferences is not automatic but subject to reciprocity. This means that another African country can only claim a preference if it gives something in exchange. In a way this inhibits other African countries to benefit from preferences given by an African country to a non-African country. In this context, the 32nd Ordinary Summit of January 2019 "decided that Member States wishing to enter into partnerships with third parties should inform the Assembly with assurance that those efforts will not undermine the African Union vision of creating one African market."[29]

In conclusion, in the area of AfCFTA tariff negotiations where parties liberalize on a reciprocal basis, Article 19 could be of some use for countries negotiating with countries that have (future) agreements with non-African countries, as it gives them more leverage in demanding the liberalisation of certain tariff lines.

5.4 Making schedules of concessions an integral part of the AfCFTA

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

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

The current text implies that tariff concessions would be effective immediately upon adoption by the Assembly (provided the AfCFTA itself is in force). In other words, this addition would not need to undergo a new ratification procedure. While this appears expedient, in reality the parliaments in several African countries would

[29] Key Decisions of the 32nd Ordinary Session of the Assembly of the African Union, Press release African Union 12 February 2019, https://au.int/en/pressreleases/20190211/key-decisions-32nd-ordinary-session-assembly-african-union-january-2019

probably want to scrutinize agreed tariff concessions, as this is considered the 'meat' of the agreement, as afar as it concerns trade in goods.

Furthermore, the current text appears to imply that the adoption of the Schedules of Tariff Concessions is a one-time event. In reality, there would be hundreds of parallel tariff negotiations between countries, customs unions and/or country groupings, with various outcomes along the way. It would appear that every time the Assembly meets, it would need to adopt a collection of Schedules of Concessions.

6. Rules of origin

Rules of origin are the criteria needed to determine the national source of a product. Their importance is derived from the fact that duties and restrictions in several cases depend upon the source of imports.[30] The AfCFTA's rules of origin are planned to be finalized by the first half of 2019. This is an ambitious deadline, as rules of origin under Tripartite FTA were not agreed for several products such as sugar and automobiles.

Why do rules of origin matter for the AfCFTA? Whether African countries and African firms decide to utilize the preferential tariffs under the AfCFTA depend on the expected benefits and expected costs of doing so. A critical determinant of these benefits and costs are the rules of origin as well as the associated procedures. If the RoO or the associated procedures under the AfCFTA is too costly to implement for African firms relative to expected benefits, they would not utilize preferences under the AfCFTA. No matter how low preferential tariffs may be for African firms under the AfCFTA compared to other arrangements, the gains associated from such trade liberalization are null and void unless these preferences are utilized. RoO have a direct incidence on the uptake of preferences and rate of preference utilization.

6.1 Importance of RoO in stimulating regional sourcing

If African countries want to build their domestic industrial capabilities and create regional value chains by granting preferential tariff treatment to local firms and ensure that African firms benefit from regional integration, that supports the free flow of African goods within the continental market, then rules of origin matter.

Rules of Origin under the AfCFTA must be designed such that a sufficiently large number of African firms utilize the tariff preferences to penetrate and participate into RVCs and become active actors of Africa's industrialization process. In addition, RoO perform the same role as local content requirements in the production of final goods and directly bear on the range of locally intermediate goods that are necessary to finalize production of a given good.

[30] See 'Technical Information on Rules of Origin', WTO Secretariat, https://www.wto.org/english/tratop_e/roi_e/roi_info_e.htm

Rules of origin should not be too restrictive, but also not be too flexible. Making the RoO too restrictive or too demanding in terms of the amount of domestic processing required to be eligible for the trade preference, increase compliance costs, even more so if domestic supplies are not as cost competitive as outside supplies. In extreme cases, firms may prefer to eschew the preferential trade agreements altogether and trade on an MFN basis. Making it too flexible, the benefits in terms of domestic value-added creation and domestic participation in regional value chains would fall.

6.2 RoO procedures

Besides the rules of origin themselves, the costs of proving compliance and the related procedures are important determinant in the utilization of preferences.

1) Issuance of Certificates of Origin by African Chambers of Commerce

In order to benefit from a tariff preference, exports are often accompanied by an origin document stating the country from which the product originates, a Certificate of Origin (COO). These documents are issued by a country's customs authorities, specialized government agency or bodies assigned by the government to do this task. In various cases, chambers of commerce have this mandate. For instance, the New Zealand Chambers of Commerce has been authorised by the New Zealand Customs Service to certify preferential Certificates of Origin under the New Zealand-China and the ASEAN Australia New Zealand Free Trade Agreements (FTAs).[31] In Kenya, the COO (for non-preferential exports) has been solely done by the Kenya Chambers of Commerce with effect from 1st July 2014.[32]

Locating this service within a chamber would allow it to provide better service to exporters. In Kenya, the Chamber launched an on-line trade portal that automates the issuance of the certificate of origin, allowing for real time payments and receipt of notifications via mobile phones or online.[33] At the same time, Chambers can be provided with a sustainable source of funding as fees from members, most of them SMEs, are often not adequate. This would allow them to serve their membership better.

In October 2018, the AfCFTA was the theme of a large annual meeting of African Chambers of Commerce, coordinated by the Kenya Chamber of Commerce and

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[31] ChamberDocs, https://www.chamberdocs.co.nz/

[32] KNNCI, 'Ordinary Certificate of Origin', http://kenyachamber.co.ke/services/ordinary-certificate-of-origin/

[33] 'KNCCI to issue certificates of origin to exporters online', HapaKenya, 25 April 2016, https://hapakenya.com/2016/04/25/kncci-to-issue-certificates-of-origin-to-exporters-online/

Industry and the Pan African Chamber of Commerce (PACCI). This meeting produced an outcome document in which the African Chambers agreed on many policy positions vis-à-vis AfCFTA which can be considered to reflect demands and concerns of the African private sector, mainly consisting of SMEs. The box below reproduces an excerpt of the final resolution with the relevant paragraphs related to the AfCFTA. Specifically, on rules of origin, the Chambers emphasize that the issuance of Certificate of Origin should become of a primary mandate of all African Chambers and draws the attention to the need to avoid multiplication of rules of origin and other related procedures.

Box - Resolutions adopted by the African Chamber Leaders Forum held In Nairobi on the 24th and 25th October 2018 – relevant parts on AfCFTA[34]

Sponsors: Kenya, Pacci, Uganda, Nigeria, Sierra Leone, Seychelles, Liberia, Zambia, Rwanda, Congo. Signatories: Djibouti, Somaliland, Mozambique, Tanzania, Comoros, South-Africa, EACCIA

Agenda: The Role of African Chambers in promoting the progress of African Continental Free Trade Area

The African Chamber Leaders Adopts the following declarations:

Whereas, the key objective of the forum was to discuss the progress of African Continental Free Trade Area and the bulk of the chambers of commerce membership base,

Whereas, the Nairobi business meeting takes into consideration the following;

1. The need and importance for the private sector groups to expand their knowledge on the AfCFTA,
2. Facilitate to enhance their advocacy skills and form common positions on issues to engage effectively in public-private dialogue mechanisms,
3. Recognized that the AfCFTA is a step forward towards realizing the Pan-African dream for continental integration through trade,
4. Affirms the African unity dream which has always been the hope to realize the goal of the African union to a full political and economic independence,
5. Ensure that AfCFTA responds to Africa's Agenda 2063.

[34] Africa Chamber Leaders' Forum Nairobi Declarations, October 2018, http://kenyachamber.ke/africa-chamber-leaders-forum-nairobi-declarations/

It was Resolved, that the African Chamber Leaders Forum (ACLF):

1. Calls upon the African Chambers to actively participate in the on-going negotiations on trade agreements and policies and lobby their respective governments to ratify the AfCFTA:
6. Emphasizes the issuance of COO and ATA Carnet becomes a primary mandate of all African Chambers as global trade facilitation:
21. Affirms that the ratification of AfCFTA does not make it a necessary work on the ground, since it is a necessary framework agreement:
20. Draws the attention that that there was need to avoid multiplication of rules of origin and other related procedures:
22. Advocates for workable level of liberalization and flexibility. They expressed their concern that calling for the elimination of all tariffs is not realistic nor feasible since each FTA has an exclusion list:
23. Reaffirms that the tariff liberalization in itself does not necessarily boost trade. There is a need for infrastructure as well as logistics such as Maritime transport to be improved and developed:
24. Expresses its hope for the need of digital solutions to facilitate the negotiations process, increase transparency and reduce costs related to negotiations by avoiding travelling. Such initiative would increase visibility and credibility of African Chambers:

2) Simplified trade regimes

Even if the rules of origin procedures are streamlined or procedures can be done on-line, this might not be of use to small cross border traders, often women. In view of this, in 2007, COMESA and the EAC launched Simplified Trade Regimes (STRs) for certain types of commodities, whereby small-scale traders benefit from a simplified customs document and a simplified certificate of origin (SCOO), under which goods that are originating from member countries and whose value does not exceed US$1,000 (COMESA) or US$2,000 (EAC) per consignment qualify automatically for duty-free entry in the respective markets. The certificate is issued at the border posts to enable traders located in remote areas to benefit from the regime. The STR mechanism has not yet been adopted in SADC, although efforts are underway to develop similar provisions as part of the SADC trade facilitation programme and the SADC Industrialisation Strategy and Roadmap (SISR).[35] Under the AfCFTA a scheme along the lines as implemented in COMESA or EAC is not contemplated (yet).

[35] https://www.ictsd.org/bridges-news/bridges-africa/news/a-look-at-the-simplified-trade-regimes-in-east-and-southern-africa

3) Minimizing the risk of re-exports

Without an adequate verification of origin, there is a big risk that re-exports purporting to be originating from Africa will benefit from the AfCFTA. This risk is especially relevant for landlocked countries. In this context, re-exports are products imported by a coastal country such as South Africa from a third country/non-African country such as China or EU.

It is estimated that for Zambia and Zimbabwe, currently around 30-40% of imports recorded as originating from Africa might be re-exports from a coastal country. Eliminating tariffs for such these imports would imply liberalization with the entire world. This might explain partly why these countries are less inclined to liberalize and are part of the G6 grouping. Clearly, building and maintaining the capacity at customs to verify origin will be important for the implementation of the AfCFTA.

Beyond strengthening the capacity of customs and stricter enforcement of rules of origin, other supporting measures include, enhanced customs and transit cooperation between coastal and land locked countries and the establishment and maintenance of well-equipped and secure container depots in border regions and close to markets (e.g. capitals). At the same time, goods that originate from Africa should be facilitated. In that connection, governments could issue advance rulings of rules origin to avoid misinterpretation and to provide predictability for traders as well as the involved government (Article 6 of Annex 4 of the AfCFTA on Trade Facilitation). However, such a measure has resource implications.

7. Services

7.1 Global overview of Africa's services trade

Services constitute, on average, 50% of GDP in Africa, whereas trade in services constitutes 10% of GDP. This is slightly below the world average where the ratios are 62% and 13% respectively. Yet, services data for the majority of African countries are highly modest, as many countries do not report detailed statistics, and some do not report at all. Moreover, data on services trade are classified by modes where such data is not available for African countries. For example, in the World Development indicators of the World Bank, data on Mode 1 and Mode 2 can be found for a number of African countries which suffer from lack of good quality, yet data on Mode 3 and 4 is generally is not available.

Adding to lack of good quality data, there is a problem of informality of the services sectors in Africa whether we are talking about the contribution of services to GDP or trade in services. Such informality implies that contribution of services sectors and trade in services in Africa are underestimated. In fact, available anecdotal evidence based on case studies suggest that trade in services in Africa is happening and increasing, yet suffers from informality due to restrictive regulations.[36]

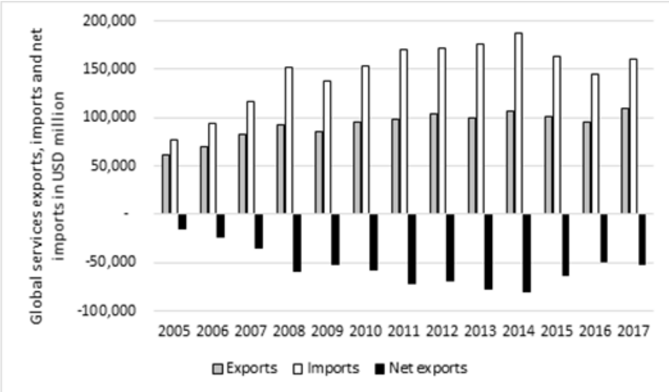
Globally, Africa is a net importer of services[37]: Africa's services trade deficit with the world was around USD50 billion in 2017 (see table below).

If we split out services into four broad services categories, namely i) goods-related services, ii) transport services, iii) travel services and iv) other services, Africa registers a large services trade surplus for travel services and a smaller surplus for goods-related services. Goods-related services include manufacturing services on physical inputs owned by others and Maintenance and repair services.

[36] Diehl N, and A. Goswani (eds.) From Hair Stylists and Teachers to Accountants and Doctors – The Unexplored Potential of Trade in Services in Africa, World Bank (2016), http://documents.worldbank.org/curated/en/477321469182630728/The-unexplored-potential-of-trade-in-services-in-Africa-from-hair-stylists-and-teachers-to-accountants-and-doctors

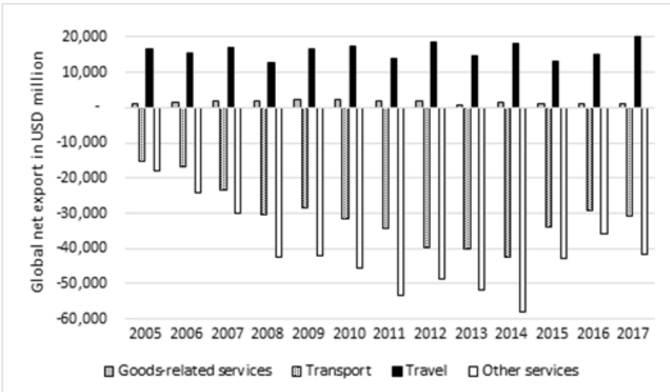
[37] UNCTADstat has no information about intra-African services trade, only Africa vis-à-vis the World

Africa's global services exports, imports and next exports (USD mln)



Source: UNCTADstat, author's calculations

Africa's global net export of goods-related, transport, travel and other services

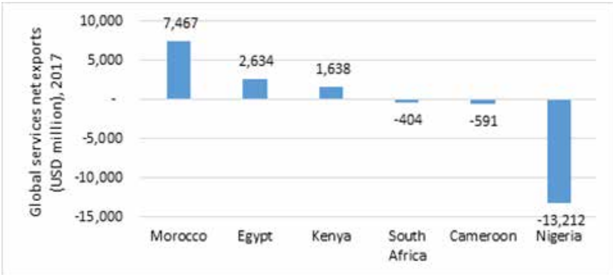


Source: UNCTADstat, author's calculations

Africa has a transport services deficit of USD 40 billion. Intra-African liberalisation of these services might be a way to reduce reliance on the world market and generate employment.

Morocco, Egypt and Kenya (in EAC) are likely to look for services liberalisation, as they currently appear to be competitive in terms of the global services trade balance. On the other hand, services liberalisation especially in Nigeria (ECOWAS) might not be a priority as it appears that the capacity to export services within Nigeria appears to be limited.

Global services net exports of the 5 large economies across Africa (2017)



Source: UNCTADstat, author's calculations
Note: all figures for the year 2017, except for Cameroon (year 2016)

7.2 State of play AfCFTA services negotiations

In December 2018, the guidelines for services negotiations under the AfCFTA Protocol on Trade in Services were adopted. Some key points of the guidelines will be discussed.

It was agreed that the first round of negotiations shall cover five services sectors, namely: business services, communication services, financial services, tourism and travel related services, and transport services. Subsequent negotiations will cover all other services sectors.

The starting point for the services negotiations are the GATS schedules for WTO Members and autonomous liberalisation at the national level for non-WTO members. Since the level of liberalisation bound at the WTO is usually lower than what countries actually apply at the national level ('autonomous liberalisation'), this modality could be considered to put non-WTO members at a disadvantage their baseline would be the actually applied levels of market access.

The method of negotiation of specific commitments shall be the request-offer approach. Each Member State shall make an initial offer to all other Member States, following which other Member States may request improvements in the sectoral coverage of commitments and/or in the level of liberalisation commitments offered. A Member State may make a request to another Member State, a group of Member States, or to all other Member States. A Member State may make an offer in response to requests or on its own initiative.

The requests and offers shall be sent directly to the Secretariat in accordance with the formal channels of communication. Upon receipt, the Secretariat shall transmit the request and offers to all Member States for their consideration and action. Where appropriate, the exchange of requests and offers may be carried out at sub-regional meetings convened under the auspices of a REC

With regard to the transparency of the process, the guidelines simply say that 'negotiations shall be transparent and open to all Member States in all negotiating processes.' When negotiations are concluded, Member States shall, through AfCFTA Secretariat, notify the outcome of such negotiations to all other Member States. The guidelines state that 'the roadmap for the negotiations shall allow adequate time for Member States to conduct national consultations,' but it does not require Member States to actually hold such national consultations, and is silent with whom these consultations should take place, or how.

The January 2019 AU Summit decided that the Schedules of Specific Commitments should be submitted to the January 2020 Sessions of the Assembly, in line with agreed modalities.[38] A main difference with the tariff negotiations is that the services negotiations did not establish a benchmark, e.g. minimum level of liberalisation to be attained by all African countries. In other words, the pressure to have commitments by January 2020 is lower than the pressure to have commitments on tariffs (by July 2019). In fact, the African Union press release on the entry into force of the AfCFTA did not mention the negotiation of services commitments as a 'supporting instrument to facilitate of the operational phase of the AfCFTA', i.e. services is, for the moment, not one of the outstanding issues to make the AfCFTA operational.

'All that is now left is for the African Union and African Ministers of Trade to finalize work on supporting instruments to facilitate the launch of the operational phase of the AfCFTA during an Extra-Ordinary heads of state and government summit on 7th July 2019.

The supporting instruments are: Rules of origin; schedules of tariff concessions on trade in goods; online non-tariff barriers monitoring and elimination mechanism; digital payments and settlement platform; and, African Trade Observatory Portal.'[39]

Services negotiations are immensely complex and would have to be subject to a lot of prior analysis and stakeholder consultations.

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[38] https://au.int/en/pressreleases/20190211/key-decisions-32nd-ordinary-session-assembly-african-union-january-2019

[39] 'AfCFTA Agreement secures minimum threshold of 22 ratification as Sierra Leone and the Saharawi Republic deposit instruments.', AU press release, 29 April 2019, https://au.int/en/pressreleases/20190429/afcfta-agreement-secures-minimum-threshold-22-ratification-Sierra-Leone-and

7.3 Protocol on Trade in Services

The AfCFTA contains a Protocol on Trade in Services. It sets out the general framework for the liberalisation of trade in services, generally following the structure and concepts of the General Agreement on Trade in Services (GATS) in the WTO.

Yet, Parties have not yet negotiated market access concessions i.e. the access by African services suppliers into their markets. However, several obligations will apply regardless of any such concessions, in particular those in Part IV of the Protocol on Trade in Services, 'General Obligations and Disciplines':

- Most Favoured Nation treatment: "With respect to any measure covered by this Protocol, each State Party shall, upon entry into force, accord immediately and unconditionally to services and service suppliers of any other State Party treatment no less favourable than that it accords to like services and service suppliers of any Third Party." (Article 4.1 of the AfCFTA Protocol on Trade in Services).
- Transparency: "Each State Party shall, in a medium that is accessible, publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Protocol. International and regional agreements pertaining to or affecting trade in services to which a State Party is a signatory shall also be published. Each State Party shall notify the Secretariat of any international and regional agreements pertaining to or affecting trade in services with Third Parties to which they are signatory prior to or after entry into force of this Protocol." (Article 5.1 and 5.2 of the AfCFTA Protocol on Trade in Services).

The MFN treatment provision in the AfCFTA means that the best access conditions that have been conceded to one country must be extended to all African countries that are party to the AfCFTA. This amounts to a prohibition, in principle, of preferential treatment among African countries. An exemption from this prohibition is made for countries that are members of 'regional economic communities, regional trading arrangements and custom unions' (see Section 5.1 above).

MFN exemptions

Under the WTO GATS, WTO members were allowed to seek exemptions from the MFN treatment obligation before the GATS entered into force. Under the AfCFTA, there has been no possibility to schedule such MFN exemptions.

Examples of MFN exemptions in the WTO GATS are:

- Authorization for purchase of real estate in Italy by foreign natural persons and juridical persons granted on the basis of reciprocity (all sectors).

- National treatment is granted only to services and service suppliers of the parties to the regional convention on road transport (in road transport sector).
- Licenses for establishment of foreign service suppliers based on reciprocity (financial services).
- Provisions in existing or future agreements on international road haulage (including combined transport - road/rail) and passenger transport, concluded between the EC or their Member States and third countries, which: - reserve or limit the provision of a transport service between the contracting parties or across the territory of the contracting parties to vehicles registered in each contracting party.

According to the EAC Common Market Scorecard 2014, EAC member states maintain several measures that violate the MFN principle and which were not listed as an MFN exemption in the WTO:[40].

- Rwanda: Authorisation of a foreign legal entity to provide architecture or engineering services in Rwanda as long as reciprocity is admitted by the country in which it is registered.
- Tanzania: No person driving a motor vehicle shall be required to produce a certificate of insurance if a valid and subsisting license to use such motor vehicle has been granted any law in force in Malawi, Kenya, Tanzania, Zanzibar, Uganda or Zambia.

These two measures maintained by Rwanda and Tanzania respectively appear to violate the MFN treatment obligation of the AfCFTA as well. If Rwanda gives market access to a foreign architect from one country, it has to give this treatment unconditionally to architects from AfCFTA countries. If Tanzania requires a certificate of insurance for a person with a DR Congo driver's license it would be treatment less favourable than that provided to e.g. persons with a Kenyan driver's license.

In conclusion, implementation of the MFN principle under the AfCFTA could mean in practice that a country would be legally required to change its laws and regulations. African countries should be afforded the opportunity to identify any measures or agreements with other countries that should be carved out from this obligation.

[40] East African Common Market Scorecard 2014, http://documents.worldbank.org/curated/en/799871468194049251/Main-report

8. Conclusions and Recommendations

This study identifies issues and challenges of the African Continental Free Trade Area (AfCFTA), with a focus on East Africa.

In 2019 the Agreement establishing the AfCFTA will enter into force, marking the end of Phase 1 negotiations. Nonetheless, negotiations on rules of origin continue and negotiations on tariffs as well as services concessions have yet to commence. In December 2018, African trade ministers endorsed the Modalities for Tariff Liberalisation which set out the parameters for the tariff negotiations such as the required minimum level of liberalization. They also adopted the Negotiating Guidelines for Schedules of Specific Commitments and Regulatory Frameworks for Trade in Services.

The available studies on the expected impact of the AfCFTA generally point a rosy picture for the whole of Africa. For Eastern Africa, the picture appears to be a bit more differentiated, and there are indications that some countries might lose out more than others. Some of the key findings of this study:

- It is expected that Africa's trading nations that already trade a lot with other countries will be ones benefitting the most, i.e. South Africa, Nigeria, Morocco, Egypt and to a lesser extent Ghana. None of these countries are in East Africa.
- The impact of the AfCFTA would be larger for countries that do not have a lot of (current) trade taking place under existing preferential agreements, namely Djibouti, Eritrea, Ethiopia, Somalia and Sudan.
- Wages for 'unskilled' workers in agriculture for the country grouping 'rest of Eastern Africa' covering many countries including those in the Horn of Africa, Kenya and the islands (Madagascar, Mauritius, Seychelles) appear to decline. As agriculture is often the most important occupancy to provide for livelihoods, more analysis is called for countries in East Africa in order to have more indications about the impacts of the AfCFTA on labour across East Africa.
- In Ethiopia, the available studies suggest pro-rich bias and negative effects for the manufacturing sector. Such studies appear to justify the cautious stance Ethiopia has been taking when it negotiated the tariff modalities.
- Tariff revenue losses will take place across all East African countries. They appear to high both in relative as well as absolute amounts for Tanzania. However, there is no consensus across studies about the magnitude. In addition, for many countries within East Africa there are no estimates, indicating a need for more research.

In the tariff negotiations, the following could be considered:

1) **Choice of negotiating partners:** Countries could avoid losses by not choosing to negotiate with certain partners. E.g. some simulations suggest that Egypt would be source of welfare losses for Kenya if tariffs are eliminated in the trade between them. This study suggests that negotiations with neighbours might be a good way to way to start. E.g EAC could start negotiations with DR Congo, Sudan with Ethiopia etc.
2) **Negotiating the right deals,** in terms of exclusions from liberalisation of imports for sensitive products (e.g. sugar in EAC) while other products should not figure on the exclusion list of the negotiation partner (e.g. iron/steel for Kenya, Uganda as results of 1 study suggest).
3) **Compensating 'losers:'** CSOs should develop proposals for adjustment facility/ compensation mechanisms for countries that will be negatively affected.

The February 2019 AU Summit decision clearly shows that the priority for 2019 will be the negotiation and submission of tariff schedules by AU Member States. The modalities for tariff liberalization require all African countries to eliminate tariffs on 97 per cent of tariff lines and 90% of imports. This is an ambitious level of liberalisation in comparison with other FTAs in force between developing countries.

The implementation of these modalities will be a huge task: it will require the negotiation of up to 200 tariff deals between countries and/or customs unions. This study recommends that CSOs support the creation of on-line tools to facilitate the negotiations administered by the AU Secretariat. This would significantly reduce costs for the governments involved in terms of travelling and number of meetings. It might also help smaller countries to get offers made in accordance with the modalities to be accepted by larger countries (as non-acceptance of eligible offers could be monitored). This proposed website should also contain publicly available information about the negotiations, taking due account of the sensitive and/or confidential nature of information.

With respect to Rules of Origin, there is a need for more transparency on what has been agreed and not agreed so far. Rules of origin should not be too restrictive; otherwise countries that are low in the value chain have more difficulties moving up. Furthermore, there is a need to reconsider certain RoO procedures, including the issuance of certificates of origin by African Chambers of Commerce and the introduction of Simplified Trade Regimes (STR). CSOs are recommended to make proposals on STR for inclusion into the AfCFTA, identifying the best elements of such schemes in Africa and other regions. On rules of origin, an alliance could be formed with African chambers of commerce who have an interest in being mandated by their governments to issue certificates of origin. This would be a source of revenue that could enable them to better serve their membership, the bulk of which are SMEs.

On services, countries should be made aware of the implications of the MFN treatment obligation of the AfCFTA and the need for the possibility to schedule MFN exemptions. In addition, CSOs should consider to call upon all countries, including larger countries such as Nigeria and South Africa to sign and ratify the Protocol on Free Movement of Persons, Right to Residence and Right to Establishment.[41] Liberalisation of services markets can only become tangible if the movement of persons is liberalized.

[41] African Union, 'List of countries which have signed, ratified/acceded to the Protocol to the Treaty establishing the African Economic Community relating to Free Movement of Persons, Right of Residence and Right of Establishment, https://au.int/sites/default/files/treaties/34244-sl-protocol_to_the_treaty_establishing_the_african_economic_community_relating_to_free_movement_of_persons_right_of_residence_and_right_of_establishment.pdf