

2019 tralac Annual Conference

Draft Speaking Notes for the Chair of the tralac Board

Protocol greeting ...

Good morning Ladies and Gentlemen.

It is my pleasure to welcome you to the 2019 Annual Conference of the Trade Law Centre here at the Hilton Hotel in Nairobi, where we have hosted tralac events before.

The fact that this is the third year now that tralac's Annual Conference focuses on aspects of the African Continental Free Trade Area and its implications, serves as an indication of the importance we attach to this development and to the African integration agenda. We believe the AfCFTA is a milestone event. It holds the potential for progress in many areas. We will keep it on the tralac radar and will continue our research and reporting about Phase II negotiations and the implementation of the various Protocols and Annexes. And if the AfCFTA becomes a truly rules-based system we may one day start reporting on the development of its *acquis* and the judgments rendered under its Dispute Settlement System.

The theme of this Annual Conference is '*Africa's integration Agenda – From Aspirations to Pragmatic Implementation*'. The unlocking of the potential of the AfCFTA requires clarity of vision, a firm hand to guide the unfolding process, and concrete follow-up action over a wide spectrum, for years to come. The adoption of the AfCFTA legal instruments is only the start. The State Parties and the AfCFTA institutions will have to design and implement a comprehensive action plan or plans in order to make the AfCFTA a reality. The private sector and Africa's citizens have high expectations about the opportunities that could

be realized and that are being promised as part of the implementation of the AfCFTA.

The AfCFTA has to be brought down to the dust of the arena of actual trade, investment, better customs procedures and shorter queues (preferably no queues) at border posts. International trade agreements serve little purpose if not implemented. A failure to properly implement the AfCFTA as a package of specific commitments involving several disciplines, would be disingenuous and very unhelpful. This Agreement and its Protocols are not about good intentions. There must be concrete action.

A lot has been said and written over the years about Africa's developmental problems. We know them well. We are well informed about the challenges inherent in our small markets and land-locked territories. We also know that regional integration makes sense for Africa. We acknowledge that the Regional Economic Communities have booked some major successes on this score but that much more needs to be done. For example, overlapping membership, governance failures and the absence of trade in services commitments remain major impediments to the establishment of regional and continental markets in the 21st century.

The AfCFTA will not replace trade with the rest of the world. But we must unlock the potential in intra-African trade. Only about 17 % of what we produce is exported to other African destinations. And about 60 % of intra-African trade happens in the SADC region. Present trade patterns in Africa are skewed and national economies are at different levels of development.

Infrastructural and trade facilitation obstacles constitute a specific challenge. There are many incremental steps which can be taken to tackle them. It is for this reason that the theme of this Conference emphasizes *Pragmatic Implementation*. It is true that Rome was not built in a day --- as we have heard from some commentators. But we should be careful in the selection of our metaphors. Rome was definitely built; the evidence is still there to be observed.

It was built, brick by brick and day by day. And there were committed architects and engineers in charge. There were many bricklayers and carpenters too.

I would also like to add a few observations about global developments. A united Africa is necessary in order to steer our boat through the turbulent waters of contemporary international relations and of the multilateral trade system. Things are not well in the WTO --- which may soon not be able to render binding rulings through its Dispute Settlement System. And there are serious tensions between the USA and China. They will affect other nations too.

The hapless efforts to find agreement on Brexit is a reminder of how catastrophic it may become when the structures and benefits of a well-functioning and deep regional integration regime are deliberately dismantled and must be replaced by re-invented national systems. And may I remind you that the present upheavals in the House of Commons are actually only about stage one of the process to extract the United Kingdom from the EU. Not one provision has yet been negotiated about what matters most --- the future and permanent trade relationship between London and Brussels. The really important negotiations will start post Brexit.

What is the extent of the AfCFTA's ambition and ability? Recent statements from African Union (AU) sources hint at a novel role; to serve as a platform which will allow Africa to speak with one voice on global affairs. Even *The Economist*, in a recent article on the "New Scramble for Africa", seems to hold this view. "*On the structural front, there could be strength in unity. The African Continental Free Trade Area.... could be a big plus, giving the continent a single voice in some negotiations.*"¹

The AfCFTA will only be able to do so if endowed with the necessary powers and institutions. Does the AfCFTA have a mandate to speak on Africa's behalf?

¹ *The Economist*, March 9, 2019 at 20.

About what? What will this “one voice” say and which institution will articulate Africa’s concerns and preferences?

International institutions are not like national Parliaments. They are not democratically elected and do not enjoy inherent powers. Only in rare instances and in deep integration arrangements will supra-national institutions exist and be able to exercise jurisdiction over matters normally under the control of the governments of the Member States.

Africa does not have examples of successful supra-national institutions. They are not found in the RECs. This is not surprising. African countries are at vastly different levels of economic development and have their own relationships with external parties. African Governments are protective of their sovereignty.

These caveats do not mean that one African voice will not bring benefits in specific areas. The report in *The Economist* referred to above writes that countries such as China, India, Turkey, the United States and the EU have embarked on new investment, military, mining and trade initiatives in Africa. “*This suggests that the continent will increasingly be a place where international rivalries play out.*”²

A new African voice will require a high level of unity and a joint view on many aspects of a changing international environment. Nuanced and specific responses will have to be worked out in order to have a meaningful impact. It will not be easy. AU institutions as well as those of the AfCFTA take decisions on substantive issues on the basis of consensus.

In the days of the cold war it was easy to opt for non-alignment. The challenge now is to become pro-active and to navigate a very different and fast-changing global landscape.

² Ibid at 18.

Do the principles underpinning the AfCFTA and at its institutions shed light on a “one voice” prospect? The first general objective listed in the AfCFTA Agreement is to “*create a single market for goods, services, facilitated by movement of persons in order to deepen the economic integration of the African continent....*” This sounds like a new message. Let us listen carefully --- we must hear what it is saying on our behalf.

It is my pleasure to welcome you all to the 2019 tralac Annual Conference. We look forward to your active participation to make this Conference a success.

Thank you.