



**Australian Senate Standing Committee on Foreign Affairs, Defence and Trade:
Inquiry into trade and investment relationships with the countries of Africa**

The Trade Law Centre (tralac) is pleased to make a submission in response to the request for contributions to the Inquiry

Since this inquiry is about “*Australia’s trade and investment relationships with the countries of Africa*” the essential focus would presumably be on specific countries, investment locations and export destinations. And the benchmarks for how this relationship should look like, should be stated. What is the aim behind the present exercise? Will trade in goods, trade in services, and investment matters be targeted as separate objectives or in an integrated fashion? Is the aim to shape a new trade and investment governance regime (negotiate preferential agreements with specific African countries, or customs territories), or is the aim to enhance trade and investment facilitation within current governance parameters (eg World Trade Organisation (WTO) agreements and the current unilateral preferential arrangement, operating under a WTO waiver)?

There is however value in noting some bigger picture aspects, and what African governments are doing in order to boost African trade and regional integration. Information, and informed perspectives, on these developments can contribute to the development of an Australian strategy for Africa.

Beyond Mining and Commodities?

In April 2016, *The Economist* published an article on African developments under the heading: *Making Africa work --The continent’s future depends on people, not commodities*. It made the following points:

- For decades, sentiment about Africa has followed commodity prices. Miners sank billions into African soil to feed China's appetite for minerals. Now investors are glum.
- Pessimists should remember two things about commodity busts. They don't last for ever. And they don't hurt everyone: 17 African countries with a quarter of the region's population will show a net benefit from the current one, thanks to cheaper energy. More important, by focusing on the minerals markets it is easy to miss some big trends that are happening above ground.
- In the long run, the potential rewards from a market of 1.2 billion people are too attractive to ignore, despite the risks. Africa has also become more peaceful and democratic than it was even a decade ago.
- Africa's past has long been defined by commodities, but its future rests on the productivity of its people. By 2050 the UN predicts that there will be 2.5 billion Africans—a quarter of the world's population.
- Given good governance, Africa can prosper, sustainably.

Some Implications

- In some ways, the continent's future is in the balance. Whether it bounces back from the commodity slump or slips back into stagnation, war and autocracy will depend on whether enough of the continent's leaders keep moving forward. These leaders need to be supported.
- A future relationship with Africa should include involvement in projects and programmes which will assist those leaders that pursue inclusive growth policies, infrastructural development, and very importantly, better governance.
- Good governance is vital for a rules-based, transparent and predictable trade and investment environment. Foreign investors should think about ways and means to promote better governance in the countries where they do business. It is also in their best interest.
- If the opportunities in Africa are only viewed as of the *quick profits and run* kind, then it does not really matter how the governance environment looks. This is not in the interest of Africa's inclusive growth and sustainable development.
- Trade facilitation issues remain a major challenge in Africa. (It costs more to move one container from Windhoek, Namibia to Lusaka in Zambia, than to move the same container to Perth from Windhoek via Walvis Bay.) Bad roads, corruption, red tape and non-tariff barriers still hobble trade between African countries, which still only accounts for about 17% of total African trade. Improving this situation requires not only investment in infrastructure, but domestic regulatory reform and regional

harmonisation of regulations in these infrastructure services sectors, fighting corruption and liberalising trade, especially in terms of reducing non-tariff barriers. But trade facilitation also has to be anchored in support infrastructure (physical, policy and legal) that enhances the capacity to produce tradeables competitively. For example, the development of quality infrastructure (eg laboratories and other testing facilities) has to enjoy priority, supported by the adoption and implementation of appropriate sanitary and phyto-sanitary (SPS) measures, and technical regulations at national and regional levels. These are essential to ensure effective access to export market opportunities.

What are African Governments doing re Trade and Integration?

- Regional integration is actively pursued; most African markets are too small to attract sufficient investment in industrialization. The Regional Economic Communities (RECs) have been formed since post-colonial times to make this possible.
- Some are formally committed to the formation of customs unions and common markets but progress has been slow. Many member states battle with weak governance structures and technical constraints - which make it difficult to comply with SPS standards for agricultural exports, for example.
- Africa's own continental integration agenda aims to boost intra-regional trade from the current low level, to 25 percent or more by 2022. How will this happen?
- The Tripartite Free Trade Area (TFTA), consisting of the members of COMESA, SADC and the EAC, was launched in June 2015 but only covers trade in goods; with modest levels of tariff liberalization to start with. The original intention was to conclude a trade in services agreement too, but it is uncertain whether this will happen.
- Services and trade facilitation may now be prioritized in the other continental initiative, the Continental Free Trade Area (CFTA), under the auspices of the African Union. The negotiations started at the beginning of 2017 and all 55 African Union Members are involved. An important lesson from the TFTA experience, that is borne out by the lack of implementation of most intra-African trade agreements, is that African governments are more comfortable with best endeavour provisions, than with binding commitments.
- Investment governance matters have an important feature of the broader governance and development agenda; reflection and appraisal instruments such as bilateral investment treaties have prompted new thinking about fundamental aspects of rules-

based governance such as dispute resolution. It is not common to find provisions in regional dispute resolution arrangements that provide access for private parties; and African governments do not have a track record of litigating against each other.

- Preferential non-reciprocal trade arrangements are still in place for most African countries. The African Growth Opportunity Act (AGOA) with the United States (US), the European Union's (EU) Everything but Arms and Generalised System of Preferences (GSP) programmes (including the Australian System of Tariff Preferences (ASTP) are examples). The poor uptake of these preferences demonstrates that there may well be more fundamental challenges, including the weak industrial capacity of African countries, and the more general lack of competitiveness, or that there are substantive provisions in these arrangements (eg rules of origin) that make it very difficult to access these potential market opportunities. These issues motivate very strongly for a broader approach to forging new partnerships with Africa, including support that will assist to address, what have been historically called, supply-side issues, but perhaps can be broadly referred to as competitiveness challenges.
- The experience of the Economic Partnership Agreement negotiations between groupings of African countries and the EU offers important lessons for third parties, including the Australia and the US, should they be interested to negotiate reciprocal, WTO-compatible trade and investment agreements with African countries. Limited success has been achieved after more than a decade of complex negotiations. Only one such agreement really got off the ground; the Southern African Development Community (SADC) EPA, which entered into force in October 2016. The African members are South Africa, Namibia, Lesotho, Botswana, Swaziland (these 5 are the member states of the oldest Customs Union in the world) and Mozambique. An important contributory factor to the complexity of negotiations with external parties, is the fact that Africa's own integration process is still under construction.