



2014 tralac Annual Conference Report

tralac hosted its 2014 Annual Conference at The Table Bay Hotel, Cape Town , South Africa, on 15 and 16 May. The conference theme, “A 21st century integration agenda for Africa,” provided a context for a very active debate on trade related issues and regional integration in Africa. The aims of the conference are, to:

- encourage frank and open debate among a broad stakeholder community on trade and regional integration matters in Africa
- provide an update on regional trade and integration developments; reflecting **tralac**’s work programme
- encourage forward looking exploration of Africa’s integration agenda; providing suggestions for further research, training and dialogue.

Our formula is that all **tralac** staff contribute to the programme, and key inputs from experts such as Professor Thandika Mkandawire, our keynote speaker this year, George Lipimile, Commissioner, COMESA Competition Authority and **tralac** Associates, Gerhard Erasmus and Paul Kalenga, add gravitas to the programme. Discussing the ‘way forward’ is an important part of the **tralac** Annual Conference; the broad stakeholder representation provides excellent opportunity for innovative thinking about Africa’s integration agenda for the 21st century.

The six conference sessions focused on the political economy of regional integration in Africa, Southern African Development Community (SADC) matters, Dispute Resolution of Rules-based Governance Matters for Regional Integration, Competition law and policy in a regional context, Economic Partnership Agreement (EPA) negotiations and the Implications for a Continental FTA (Free Trade Area) of Tripartite FTA negotiations.

Trudi Hartzenberg, Executive Director of **tralac**, opened the conference, sketching the increasingly complex production, industrial organisation, trade and regional integration challenges of the 21st century economy; proposing new thinking on trade and industrial policy issues to address these challenges. The import tariff remains the preferred trade policy instrument; yet it is unlikely to be the silver bullet to address the competitiveness challenges which in our region are associated with issues such as the erratic supply and high cost of energy or labour market issues such as minimum wages and the associated wage-productivity nexus. A recent submission as part of a broader application to raise the import tariff on sugar, to the South Africa’s International Trade Administration Commission (ITAC) which also serves as the

Southern African Customs Union institution, highlighted these issues specifically. The import tariff was duly increased, and while it may reduce import competition, it is unlikely to solve the real competitiveness challenges.

The export tax is featuring very prominently in industrial policy debates, as an instrument to be used to promote beneficiation or value addition of commodities. More detailed analysis of what will support such downstream industrial development is required; cognisance should be taken of the fact that for many commodities the first stage of such downstream development is often highly capital and skill intensive. Much more than an export tax will be required to support such industrial development processes. The services agenda also requires new thinking; services play an increasingly important role in production (it is not possible to be competitive in manufacturing without competitive services inputs), job creation and global trade. There has been a reluctance to embrace a comprehensive services agenda in the region. This debate is still framed within a GATS (General Agreement on Trade in Services) framework. While a useful analytical construct, the framework remains foreign to many private sector services suppliers, and there is increasing recognition that the GATS has not prompted significant liberalisation of trade in services. A different entry point for the discussion on services is required. The services agenda is essentially about the domestic regulatory environment; and the current focus on infrastructure development in the region provides an opportunity to address the key services regulatory issues associated with infrastructure services such as transport. A services agenda that focuses on such regulatory reform to enhance the efficiency of, and access to infrastructure services will contribute not only to enhancing competitiveness, but is also fundamentally linked to more effective trade facilitation, and directly contributes to development outcomes. Effective trade policy should thus reflect the international connectedness of world economies and market dynamism of the 21st century.

Our keynote speaker, Professor Thandika Mkandawire from the London School of Economics, focused on the politics of Regional Integration from an African perspective. He argued that regional integration is too important to be left to the institutions of regional integration. Too often comparisons of the European integration experience with that of Africa mask the unique challenges and experiences of African integration. Professor Mkandawire asked whose political will is needed for integration and pointed out that one should not dismiss the current spaghetti bowl of regional integration given the multiple identities of African states. He argued that the failure to understand business interests in regional integration is like Hamlet without the Prince and questioned whether 'Afrocrats' in regional institutions are articulating national interests or whether they truly embody regional interests as their 'Eurocrat' compatriots.

Professor Mkandawire then discussed "Seven I's" of regional integration: initial conditions, ideas, individuals, institutions, interests, industrialisation and international order. He also pointed out that some of the strongest unifying elements in the region are non-economic; in particular the liberation struggle played a key role in SADC and drove the diplomacy of good neighbourliness. As such the new struggle for Africa has shifted towards an economic struggle post the liberation of South Africa. At the moment Africa's NGOs are more concerned about North-South issues instead of a genuine focus on Pan-Africanism. When considering the topic of regional integration this has been shaped by a history of personalities, technicalities and the substance of how exactly to deal with regional and multinational integration. The notion of a state applied to the African continent after independence brought new realities and practices as well as the notion of sovereignty. Sovereignty has been a significant notion that has been used

and sometimes abused when dealing with sensitive trade negotiations. It was also pointed out that when considering the pace of regional integration it is determined by the pace of the slowest moving state.

A lively discussion followed this session. One question asked was when considering regional integration, Africa is seen as a poor continent and in this context what can be done to increase economic growth, stem rising inequality and reduce poverty? The answer was that pro-poor policies are poor policies as they are poorly funded, often without social anchor. Another question considered whether the regional integration of Africa in 2014 is more possible now during an era of politicians versus the era of statesmen in the 1960s and 70s. The issue of China and India's interests in Africa was also raised. The fact that African regional integration initiatives are funded by outsiders, with their own strategies to define themselves in the global geopolitics, raises issues concerning their influence on the active redefinition of Africa.. Additionally, the liberation struggle was a huge focus of the African Union; this has only recently shifted to a focus on the economic struggle as well as struggle for democracy which requires new forms of leadership.

Paul Kalenga, **tralac** associate, then discussed a forward-looking RISDP (Regional Indicative Strategic Development Plan) review with a strong focus on the market integration pillar of SADC's integration agenda. A revised RISDP for 2015-20 will be discussed by the SADC Council in August, 2014 in which its relevance will be reviewed as well as the setting of realistic targets. Currently, there is no appetite for supra-nationality in integration in SADC, but a new debate is emerging on rules-based integration as well as effective dispute settlement processes. The SADC post-FTA integration milestones are becoming increasingly challenging and it is becoming imperative that relevant, efficient, effective and coherent interventions are made. It was questioned whether the current approach, following the European model, is appropriate and if the current targets are realistic. It was highlighted that it will be hard to change the model when everything is funded by donors in the region. The RISDP review is an opportunity for the region to assess its approach to regional integration adapting to the needs of the 21st century and should focus on a search for competitiveness, relevance, efficiency, effectiveness and coherence in achieving the overall objectives of growth and development in SADC. As such, involvement of stakeholders remains critical in the review process by shaping its outcome and impact on regional development.

JB Cronje, **tralac** researcher, then gave a discussion on the SADC Trade in Services Protocol as well as other services-related protocols. The key point was that coherence is needed in domestic regulations, GATS commitments, as well as regional legal instrument for the SADC Trade in Services agenda to succeed. The purpose of the Trade in Services Protocol is to promote the interdependence and integration of economies in the SADC region as it is believed that such an integrated market for services, which is strengthened by cooperative mechanisms, will allow for opportunities in a dynamic business sector, strengthen the service capacity of the region as well as its efficiency and competitiveness and allow for an expansion of the region's services exports.

Sean Woolfrey, **tralac** researcher, discussed investment promotion and protection in southern Africa and speculated whether there would be a renegotiation of the FIP (The Protocol on Finance and Investment). A re-think of regional investment governance in SADC is currently underway and presents an opportunity to address emerging challenges. Woolfrey questioned whether South Africa will push for a review of the SADC FIP which allows for international

arbitration on investment whilst the South African draft Promotion and Protection of Investment (PPI) Bill does not. A relevant question to ask is what exactly will South Africa's overhaul of its investment regime mean for governance of outward versus inward FDI? The draft PPI Bill, 2013 published by the South African government has marked a significant step in South Africa's overhaul of its investor protection regime. The PPI Bill is envisaged to replace South Africa's bilateral investment treaties (BIT) as the main instrument of governing the protection of foreign and domestic investment in the country,. A recent sign of a changing approach to investor protection in southern Africa was the 2012 publication of the SADC Model BIT which was developed in accordance with the overall goal of the SADC FIP in promoting the harmonisation of SADC Member States' investment policies and laws – which also serves as a template for Member States in the development of their own BITs or as a guide for future investment treaty negotiations.

Next, was an opportunity for Willemien Viljoen, **tralac** researcher, to discuss non-tariff barriers (NTBs) in the SADC region and how these may be addressed to reduce the costs of doing business in the region. As SADC has the highest number of land-locked states of all African Regional Economic Communities (RECs) the removal of NTBs is of paramount importance. Inadequate trade infrastructure contributes significantly to the high cost of doing business in SADC. NTBs are prolific in SADC despite commitments on their reduction and as such a comprehensive action plan is needed through trade facilitation and promotion. When Sanitary and Phytosanitary Measures (SPS) are not substantiated by scientific evidence, they may be used as NTBs and it is therefore crucial that transparency in reporting occurs.

There has been a focus on traditional factors constraining intra-regional trade in sub-Saharan Africa but there has been increasing recognition that NTBs and trade facilitation issues do pose a significant challenge to trade liberalisation and development in the region which should be given more priority. As such, SADC requires a comprehensive action plan to address the NTB challenge. It would require addressing regional and international trade facilitation, trade promotion measures, improving the business environment, encouraging foreign and domestic investment all whilst promoting transparency and the rule of law. National and regional efforts to reduce and eliminate NTBs impacting on intra-regional trade is required by SADC and requires closer regional cooperation and harmonization of institutions and regulations. The adoption of the WTO Trade Facilitation Agreement in Bali in December 2013 should provide an additional anchor in the harmonization of these efforts and the pursuit of integration in the global economy.

Gerhard Erasmus, **tralac** associate, discussed the settlement of trade disputes through the application of legal instruments within the context of regional integration dispute resolution. An argument presented was that it is often weaker states that are more defensive of their sovereignty. The instrument for international peace is international law and the enterprise of regional integration needs to be rules-based to provide transparency and predictability. Regional rule of law is impossible unless it is practiced at home and rules based governance for regional integration is enforced through effective dispute settlement. No country in Africa can prosper in isolation and there has been a general reluctance for countries in Africa to litigate against each other to resolve trade disputes and one is prompted to ponder what the consequence of African states litigating in Geneva at the World Trade Organisation, instead of regional dispute bodies, would be?

William Mwanza, **tralac** researcher, then drew upon an example of community law in COMESA and the rights of private parties by considering the Polytol case. This has set a precedent for private parties taking governments to task for violations of regional agreements. An interesting case to consider is the situation where companies are based in counties that are part of several FTAs.

Regional competition policy developments, specifically the establishment of the COMESA Competition Authority were discussed by George Lipimile, Commissioner of the COMESA Authority. The impact of regional and global integration on competition governance was explored. The question was asked whether domestic competition law is enough to deal with regional competition issues. As with any international trade agreement, domestication (which is a key point of individual constitutions) after the ratification of trade treaties, remains a problem. There is a strong need to debate the role of competition policy as a key tool for greater market governance in regional trade integration.

When considering EPAs in the region, regional MFN clauses have been resolved but remain controversial. On the SADC EPA negotiations front two substantive issues remain. These are export taxes and agricultural safeguards. The EU has accepted the new reality of developmental policy in SADC, EAC and the political priorities of African trade partners. However, EPAs are clearly a complex issue and much debate still needs to be fostered keeping in mind the October deadline as set by the EU.

Key points from the final session included arguments that the focus on the creation of only regional value chains in Africa could create efficiency bias. As such, African countries should consider developing competitiveness in specific stages in the production process and not the entire industry. With the new emphasis on regional value chains it was queried whether it implies a regional import substitution project with inbuilt inefficiencies. There is thus a need for a practical trade facilitation agenda with commitment and governance being key issues. It was argued that a new international agreement is unnecessary.

On the topic of SACU, it was pointed out that there is an urgent need to develop a trade facilitation agenda which includes harmonized paperless customs processes as well as NTB dispute resolutions. The reduction of administrative barriers at the border can make big differences in regional trade and it is thus imperative to address realities on the ground.

The Tripartite Free Trade Area (TFTA) negotiations have diverted substantially from the vision of the Kampala 2008 communiqué and the question was raised whether it is still appropriate to prioritise trade in goods and a tariff liberalisation agenda. It was also argued that it is not the task of TFTA negotiations to build a foundation for the Continental FTA (CFTA). A concerning prediction for the TFTA is that it will end up as a fragmented trade regime with a lot of bilateral agreements among the 26 states. However, the Continental FTA has arrived and the political significance of such negotiations cannot be underestimated. The mega debate for Africa is indeed the CFTA but questions were raised whether ECOWAS is keen on it but credence should be placed on Africa's private sector which is argued to be in many respects the driver of regional integration.

The 2014 annual conference was a lively event with active participation among a broad range of stakeholders, including representatives from the African Union Commission, regional economic communities, private sector, civil society, diplomatic community and donor organisations,

government departments and other trade-related organisations and academia. The feedback indicates that the conference provide a forum for debate and open discussion, stimulating new thinking about trade, industrial policy and regional integration in Africa. The general take away from the conference was that although there are many challenges in the long (and often overly optimistic) pathway of regional integration; this makes sense for Africa and can deliver development outcomes.

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Feedback from Conference participants:

'Rich interaction and contributions from the floor'

Best experience: 'Networking and updates on regional developments'

'Useful to hear from officials from SADC, COMESA, EAC about their view of the issues'

'Latest developments on RECs'

'It was the best because I learnt more about trade policy'

'Prof Mkandawire's keynote address was a very good idea in the programme'

'The discussions at the practical level were very interesting'

'Very good interactive presentation on EPA and TFTA and CFTA on the last day'

'The drama approach was quite direct and active way of deliberating pertinent trade issues'

'Very good resource persons and good topics'

'More private sector participation'

'Invite ECOWAS'

'Delegate list in pack'

'We need more time – 2-3 days'

'If possible, provide the papers before the conference'

'Excellent conference'

'Best **tralac** conference yet'