

## ***Services regulatory issues: An update on regional trade in services developments***

The Members of the African Union are set to launch the Continental Free Trade Agreement (CFTA) negotiations in June 2015. Draft Objectives and Guiding Principles for Negotiating the Continental Free Trade Area (CFTA) provide for the concurrent negotiation of a comprehensive Free Trade Agreement (FTA) covering trade in goods and services, investment, intellectual property rights, trade development, competition policy and movement of business persons. Lessons can be learned from the COMESA-EAC-SADC Tripartite FTA (TFTA) negotiations in terms of scope, coverage and negotiating modalities for the negotiation of the CFTA. Different approaches to the negotiating of the CFTA should be considered.

Developments outside the continent indicate a notable shift in trade in services negotiations approaches. The mega regional trade agreement, the Transatlantic Trade and Investment Partnership (TTIP), between the European Union (EU) and the United States of America (USA) places the focus squarely on achieving regulatory convergence. They wish to achieve this, in some cases, through the harmonisation of new regulation or, in other cases, by recognising each other's existing standards as mutually equivalent. If successful, what implications will an agreement on regulatory convergence between the EU and USA hold for Africa? Regulatory standards and disciplines emerging from the TTIP would probably apply to trade with the rest of the world, thus influencing the development of international standards and regulation.

Equally, the stagnation of trade in services negotiations under the General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO) necessitated the Trade in Services Agreement (TISA) negotiations



among 24 interested WTO Members and has the potential to further liberalise trade in services and establish disciplines on a sector-by-sector or issue-by-issue basis. Among the more advanced negotiations at this stage are those involving domestic regulation, telecommunications, financial services, transparency, and e-commerce. Structurally, TISA will, for example, provide for the horizontal application of national treatment and the temporary suspension of the most-favoured-nation treatment obligation. Mauritius (the only African country) recently joined the TISA negotiations. It will enable Mauritius to secure improved access to countries that account for 70% of world trade in services, including the EU. Mauritius is positioning itself as the gateway to investors in Africa. This decision to join the TISA negotiations could also be viewed against the stalled (services) negotiations in the Eastern and Southern Africa Economic Partnership Agreement(EPA) negotiations to which Mauritius is a party.

The WTO Waiver Concerning Preferential Treatment to Services and Services Suppliers of Least-Developed Countries (LDCs) allows non-LDC Members to provide preferential market access to the services exports from LDCs. The LDC Members recently submitted a collective request identifying particular sectors of export interest to them. Interestingly, the request clusters various trade and trade-related issues affecting trade and particular services sectors together. Much emphasis is placed on improved market access and related matters for movement of persons (mode 4) but not on the recognition of qualifications. This is a regulatory issue and in the absence of cooperation among competent bodies the value of any market access commitments on movement of persons will be limited.

Closer to home, the Members of COMESA and SADC are (and have for some time been) engaged in trade in services negotiations. Some SADC Members are also preparing for trade in services negotiations with the EU as part of concluding comprehensive EPAs. In particular, market access and national treatment negotiations in SADC have been ongoing in certain priority services sectors. Unfortunately, nowhere are concerns being raised regarding other matters also subject to negotiation that will be instrumental to the implementation of liberalisation commitments. This would for example include the finalisation of rules of origin; the conclusion of an agreement for the mutual recognition of requirements, qualifications, licenses and other regulations affecting service suppliers; and, setting mechanisms in place to ensure transparent and effective regulation. Having concluded a protocol for the establishment of a common market guaranteeing free movement of goods, services, capital, workers and right of establishment and residence in 2009, the partner states of the EAC are experiencing implementation challenges arising from the liberalisation commitments made for movement of workers, services and service suppliers. Confronted with the practicalities of giving effect to market access commitments, partner states are faced with the challenge to synchronise regulatory regimes including developing uniform application forms and fees and standard processing times. Consequently, partner states adopted a practical and incremental approach to integration by allowing progression in cooperation among states in a variety of areas and at different speeds. Most recently, following the discovery of omissions, discrepancies and errors in the enabling legal text the partner states directed that specific amendments be made to the protocol. Partner states will also have the opportunity to review existing commitments across all modes but with specific focus on the temporary movement of persons supplying a service (mode 4). This will entail renegotiation of commitments. One thorny issue relating to the implementation of mode 4 commitments remains the recognition of academic and professional qualifications of foreign professional workers. Ensuring mutual recognition requires close cooperation between education institutions, regulatory authorities and professional bodies.

What lessons can be learned from experiences in the region and further afield for the negotiation and establishment of the CFTA? Most African countries have limited experience in the negotiation and implementation of preferential trade in services agreements. This emphasises the need to take cognisance of the most recent developments in trade in services negotiations. Possible negotiating modalities for trade in services should be based on international best practices. In light of limited existing GATS commitments, most countries will be required to undertake extensive liberalisation commitments to meet GATS Article V requirements for the establishment of a preferential trade in services agreement. However, such commitments should be preceded and underpinned by a set of horizontal and sector-specific regulatory disciplines.

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