



Report on Continental Free Trade Area (CFTA) Workshop

The Trade Law Centre (tralac) hosted a workshop on the Continental Free Trade Area (CFTA) at Newlands Sun Hotel, Cape Town, on 23 November 2015. The aim of the workshop was to examine key preparatory issues for the first round of CFTA negotiations, including the design, scope and structure of the agreement, negotiating guidelines and principles. Discussion focused specifically also on the lessons from the Tripartite Free Trade Area (T-FTA) negotiations.

Ms. Trudi Hartzenberg, Executive Director of tralac welcomed participants to the meeting. She presented a short background on the CFTA process as it continues within highly complex global and continental contexts. She noted the outcomes that beneficiaries of the CFTA would expect – including enhanced competitiveness, industrialization and sustainable development, increased intra-African trade in goods and services, among others. She highlighted how new thinking and approaches are required to enable Africa to effectively integrate while meeting and leveraging 21st century challenges and opportunities. This should include a good understanding of political economy dynamics and the role of institutions such as the African Union Commission (AUC), as well as the role of hegemons in the various African sub-regions.

Mr. Nadir Merah, Head of Trade at the AUC gave opening remarks on behalf of the Director of Trade at the AUC, Ms. Treasure Maphanga, and expressed the expectation that the workshop would deliberate on practical issues that would assist the Commission to effectively prepare documents to be considered in the first negotiation forum of the CFTA, scheduled for February 2016. He also emphasised the need for concerted efforts on the CFTA in view of developments in other regions including the Economic Partnership Agreements, the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership (TTIP). He also stressed the need for increased capacity building to ensure effective delivery on the CFTA process.

Discussions during the workshop centred on presentations delivered by respective resource persons as follows:

- 1. CFTA: Developments and organising for the negotiations – Mr. Batanai Chikwene, Policy Officer, Economic Affairs, African Union Commission**

Mr. Chikwene presented a background on the CFTA process, including the AU Assembly decision mandating Member States to negotiate the agreement; the negotiating principles, institutional arrangements for negotiations, and terms of reference for CFTA negotiating

forum; an indicative roadmap for the negotiations and conclusion of the agreement; and progress that has been attained so far in the run up to the negotiations.

2. Lessons from the Tripartite FTA Negotiations – Mr. Paul Kalenga, tralac Associate; and Mr. Anton Faul, Director for Policy Development, Trade Negotiations and Research, SACU Secretariat

Mr. Kalenga briefed the workshop on the T-FTA process. Member states of the Common Market for Eastern and Southern Africa (COMESA), Southern Africa Development Community (SADC), and East African Community (EAC) agreed to the harmonisation of their integration programmes at their 2007 Kampala Summit. It was noted that a draft agreement has been adopted and initialled, although negotiations on a number of substantive issues – including market access and rules of origin – are yet to be negotiated or completed. It was noted that the understanding of the *acquis* principle in the T-FTA negotiations has resulted in the multiple membership problem not being rectified as initially intended. A further layer of overlapping trade regimes has in fact been added.

Mr. Faul also discussed the experience in the T-FTA negotiations from the SACU Secretariat perspective. He added that, for the CFTA process, a clear understanding on negotiation modalities and principles is important to agree on before negotiations commence. This includes issues such as the *acquis*, variable geometry, the interplay between tariff offers and rules of origin, overlapping membership vis-à-vis common positions of some regions, and funding of the negotiations.

3. CFTA developments: design, scope, structure of the agreement and rules of procedure – Prof. Gerhard Erasmus, tralac Associate

Prof. Erasmus discussed the respective negotiating principles as they have been initially agreed on in the CFTA process. He noted that their meaning, legal status and relationship with the rules of procedure would have to be clear before the negotiations commence. He also noted that some aspects of the T-FTA negotiating principles – such as the *acquis* principle – seem to also have been adopted in the CFTA process and warned against replicating some of the missteps of the T-FTA process. He urged the need for political patrons to spearhead the CFTA process, a systematic and diligent process of negotiating the CFTA text, and for effective technical capacity and preparation ahead of and during the negotiations. He proposed a CFTA Model Agreement covering trade in goods and services, investment, competition, intellectual property, dispute settlement and other issues such as movement of labour.

4. Linkages and inter-connections: ensuring consistency in the CFTA – what does trade in services data tell us? – Mr. John Stuart, Independent Economist

Mr. Stuart presented the results of an Africa-wide trade in services data analysis exercise that he has recently concluded for tralac. Results were provided for the information and communication technology (ICT) and transport sectors – including main traders with global

partners; trade restrictiveness indices by country; intra-Continental trade flows; and a mapping of value chain linkages and services export value added.

Discussions

The following substantive issues arose out of the discussions on the presentations:

- It was noted that particular focus needs to be given to the negotiating principles and procedures, prior to commencement of actual CFTA negotiations.
- The negotiations will probably be Member State driven, but the challenges faced by regional economic communities or customs territories need to be acknowledged and catered for.
- There will be need to promote the role of the Chairs in the negotiations in building consensus.
- It will be important for the CFTA Agreement to have appropriate linkages with other already existing institutions of the African Union, for example the Pan-African Intellectual Property Organisation.
- There will be need for institutional support and greater inter-departmental collaboration at the level of AUC.
- A strong monitoring and evaluation mechanism will have to be put in place at national, REC, and AU levels.
- There will be need for effective dissemination of information to all stakeholders, and to manage expectations along the way.

Way forward

The workshop concluded with the discussion of research, capacity building and dialogue activities that can support the preparatory phase before negotiations start in 2016; as well as supporting the negotiations processes.