



**tralac at the Trade and Development Symposium in  
Nairobi, Kenya; 15 December 2015**

**tralac** participated in the Nairobi Trade and Development Symposium (TDS) organised by the International Centre for Trade and Sustainable Development (ICTSD) in partnership with the University of Nairobi and the Saana Institute, with the support of the Republic of Kenya that took place from 14-18 December 2015 during the Tenth WTO Ministerial Conference in Nairobi, Kenya. The aim of the TDS was to provide a forum for discussion among government and non-government stakeholders on issues related to the trade and sustainable development agenda, including the rise of Africa, climate and energy issues, food security, natural resources, and emerging governance.

On Tuesday 15 December tralac hosted a session titled *'The CFTA: Toward 21st century trade governance for Africa.'*

In her opening remarks, **Trudi Hartzenberg** emphasized that the CFTA is Africa's most ambitious integration initiative; and an opportunity to shape a 21st century integration agenda for the continent. The AU Summit decisions of June 2015 to launch the negotiations to expeditiously establish the CFTA also state that the negotiations will take place in two phases. The first phase will cover trade in goods and trade in services, along separate tracks, and phase two will cover investment, competition policy and intellectual property rights. **tralac** motivates very strongly for new thinking about Africa's broader integration agenda, and proposes that priority be given to new approaches in areas such as trade in services and trade facilitation. The interconnections between substantive issues must be formalized in the agreement to ensure internal consistency and coherence in the incentives that the agreement will provide for economic agents to make decisions that will in aggregate contribute to achieving the objectives of boosting intra-African trade, expanding productive capacity by developing and diversifying the industrial base and enhancing competitiveness. The importance of a rules-based governance arrangement was emphasised; this requires an effective dispute resolution arrangement with access for private parties to seek redress when required.

**Gerhard Erasmus**, **tralac** Associate, discussed the legal and institutional framework required to address the 21st century needs of African countries via a continent-wide trade agreement. Countries have already adopted overarching negotiation principles including the AU member states/RECs/Customs territories shall drive the CFTA negotiations with the support of the AUC and its structures, the reservation of the *acquis*, variable geometry and the REC FTAs are the building blocks for the CFTA. However, these principles are yet to be clarified; something of vital importance necessary to

be done before negotiations start. The CFTA will result in stand-alone trade Agreements resulting in legal obligations only for those which ratify the Agreements. In order to ensure that these agreements speak to each other and form a single arrangement will require a framework agreement which will bring about an institutional arrangement, permitting an 'early harvest'. Subsequent agreements can form part of the umbrella structure; with additional institutions where necessary. It is doubtful that a traditional trade in goods approach is the ideal starting point for the negotiations. Currently there is little appetite for tariff liberalisation, and related issues, such as rules of origin negotiations. After four years of Tripartite Free Trade Area negotiations is yet to reveal an agreement on tariff schedules and rules of origin. The aim of the CFTA negotiations must be to secure effective outcomes, rules-based arrangements, institutions to monitor compliance, and dispute settlement.

**William Mwanza, tralac** Researcher, stated the most pertinent issues are the manner in which a dispute settlement arrangement will be established for the CFTA and the identification of the parties which will have standing in the dispute settlement arena. The creation of a court with jurisdiction over the economic integration process envisaged is an obvious need. How this court would relate with other judicial organs at the continental level is important, not least because the areas covered by AU law are inter-related. Many of the benefits that would flow from a continental trade arrangement are dependent on a dispute settlement system where continental, regional and national laws are interacting effectively and where private individuals have access to the respective courts. This is vital for a rules-based and effective CFTA.

**Willemien Viljoen, tralac** Researcher, emphasized the importance of trade facilitation in the context of the CFTA. Transport interconnectivity in Africa is poor, there is a lack of good governance in terms of efficiency and transparency of processes and administration adding direct and indirect costs to doing business in Africa. Transit times for goods to cross a border are far beyond the international benchmark of four days. By reducing time in transit across borders, by only 20 percent, significant welfare gains can be achieved by countries such as South Africa, Nigeria, Botswana, Zimbabwe, Zambia and Malawi. A practical approach to trade facilitation that will truly address private sector concerns is needed to ensure businesses can trade easier, simpler, faster and cheaper throughout the African continent. In order to achieve this goal fundamental issues including transparency in customs operations, requirements and regulations, advanced publication of changes in trade rules and regulations, efficiency of customs operations and the simplification of customs documentation must be the principal initiatives on the CFTA trade facilitation agenda.

**JB Cronje, tralac** Researcher, highlighted the fact that a CFTA Agreement on Trade in Services should address the challenges facing those conducting business across borders making trade faster, cheaper and more predictable. The CFTA Agreement on Trade in Services should also aim to improve economic efficiency, quality of services, consumer protection and competition on the continent. Possible solutions could include setting of minimum quality standards; adoption of mechanisms to enhance transparency of laws and regulation; best practices for the development, implementation and review of domestic regulation; and rules to promote and secure electronic commerce. Considering the mandate, including the scope, sequence and timeline for the negotiations, Member States should consider the adoption of a negotiating approach and modality that is time and cost effective and deliver economically relevant results. This would, for example, exclude a protracted approach based on the bilateral exchange of negotiating requests and offers. As an alternative,

Members could consider a more realistic approach in which Member States bind their applied levels of autonomous liberalisation across all services sectors. Such an approach could deliver a framework agreement within the negotiating timeframe and provide more predictable trade conditions. The framework agreement could be supplemented by services sector specific annexes providing additional pro-competitive disciplines, standards for the formulation of domestic regulation and minimising divergence between national regulations.

A very active discussion raised a number of key issues. The interconnections between the trade in goods and trade in services agenda were emphasised; this requires novel approaches to ensure that the fundamentals of 21<sup>st</sup> century introduction, production and trade be reflected in the provisions of the agreement.

The future of the regional economic communities (RECs) such as the Southern African Development Community (SADC) was noted; these RECs are most likely to continue to exist alongside the CFTA. This will have important implications for the how the CFTA can build on what has already been achieved in these sub-regional integrational integration initiatives.

The ambition to achieve early harvests has been articulated. This means that the sequencing of the negotiations will be very important; tariff liberalisation negotiations can be expected to be very contentious, as some Member States are concerned about loss of tariff revenue, while others use tariffs to protect domestic industry from import competition. Negotiations on trade facilitation matters may be much less contentious; and it may be possible to make progress much faster in this area, than on tariff liberalisation. This has been the case in the Tripartite Free Trade Area; where, despite the fact that some Member States

The CFTA negotiations will take place in a political economy context; with Member States will articulating their specific offensive and defensive interests. It will be very important to take note of the domestic political and political economy dynamics, and identifying champions for a 21<sup>st</sup> century CFTA.