



2016 tralac Annual Conference report

tralac hosted its 2016 Annual Conference on 7 and 8 April 2016 in Swakopmund, Namibia. Continuing **tralac's** commitment to broadening the regional footprint of the annual event, this location was chosen for its proximity to the Walvis Bay harbour facility – an important trade infrastructure project for southern Africa. Holding the conference at this location was made possible with the support of the Namibia Trade Forum, which partnered with tralac to present the Conference. Following the Conference, participants had the opportunity to visit the port facility, including viewing the work on the new container facility and dry ports for Botswana, Zambia and Zimbabwe to see an example of trade facilitation in action.

The conference theme 'Towards rules-based governance in African trade and integration' provided the foundation for presentations on safeguards and trade remedies, dispute resolution and community law; and standards – with discussions on the design, implementation and adaptation of these core international trading rules. The Conference also explored the underlying structures needed to increase competitiveness in the context of technological developments, transport and logistics and industrialisation policies.

The 2016 Conference was a forum for a wide range of stakeholders to engage in robust and frank discussions on the future of trade and trade negotiations on the continent. Participants in the discussions included representatives from the African Union Commission, regional economic communities (RECs), private sector and non-profit organisations, development partner organisations, government departments and academia. **tralac** staff, associates, and invited experts delivered thought-provoking presentations that stimulated discussion on the nature and role of rules-based governance. The debate and discussion will inform tralac's work programme for the coming year.

The conference was opened by Markus Dausses, USAID Representative in Namibia who emphasised the importance of regulatory coherence and consistency to economic growth, jobs and improving the standard of living.

Trudi Hartzenberg, **tralac** Executive Director set the scene for the discussions, entreating delegates to assist in moving the conversation from overarching, broad statements on the importance of rules-based governance, to a practical agenda to take the continent forward. There is a need to find regulatory pathways that take into account the true costs of regulation, and to establish a variable geometry that is grounded in clearly articulated, predictable rules. It is also critical that we learn from others, such as mega-regionals

including the TPP as continental negotiations progress. These negotiations as well as Africa's own regional economic communities and ongoing negotiations such as the Tripartite Free Trade Area, offer important lessons for the Continental Free Trade Area (CFTA). Sequencing of the negotiations to reflect priorities such as trade facilitation, standards and technical regulations, rather than starting with tariff and rules of origin negotiations, could well provide opportunities to move ahead on less contentious issues, and issues that can contribute to boosting intra-African trade and competitiveness. The design and architecture of the CFTA have the potential to make or break the agreement.

Session 1: Why does rules-based governance matter for African trade and integration?

tralac associate, Gerhard Erasmus led a discussion on why rules-based governance matters for African trade and integration, reiterating the predictability, legal certainty and remedies that this brings. The existence of rules, access to those rules by those affected, and the ability to enforce those rules is critical to the integration project. On a regional level the existence of these factors is mixed. At a continental level, the existence of these factors will depend in part on how the instruments and institutions of continental integration are designed – these should be established with controls and remedies built in.

Michael Lawrence, Executive Director of the National Clothing Retailers Foundation (South Africa) provided a private sector view on the importance of rules-based governance. Predictability and clarity are important for business, particularly because business needs clear rules to govern profit-making. There is a gap between those developing the rules and those they affect, and the voice of business is not always apparent in the results of negotiations. Rather than a government-only approach, we need a rules-based structure that all stakeholders can buy into.

Session 2: Safeguards and trade remedies in African regional integration arrangements

Johann Human, Director: Rules Division at the World Trade Organisation, Zodwa Mabuza, Tripartite FTA Coordinator at COMESA and tralac Board Member and Paul Kalenga, Key Expert, SADC discussed safeguards and trade remedies in regional integration arrangements. Anti-dumping, countervailing measures and safeguards were discussed from the perspective of the three organisations. Unlike, for example, the United States and the European Union who are frequently bringing disputes to the WTO, many African countries are not currently using these rules to their best advantage potentially because of concerns about the diplomatic implications of doing so. An alternative explanation for the lack of use of these remedies was the lack of capacity to investigate and financial resources to establish authorities to use these rules. A further explanation is the low-levels of inter-Africa trade. Two examples of use of rules were raised, the Kenya sugar safeguard, under the COMESA treaty, which has now been in place for more than 10 years; and Zambian safeguard measures on steel notified to the WTO in October 2015.

Panellists discussed the challenge of accommodating both WTO and non-WTO members as part of the TFTA. In establishing these rules in regional and continental agreements, it would be important to go beyond what the WTO agreement provides for – the need for these rules-

based responses and remedies may be more pronounced at the regional level. As such, it should be considered whether there should be some additional flexibility and less complexity in Africa-specific rules. The importance of any additional flexibility being rules-based was emphasised. Discussion raised the benefits of the notification process, and the desirability of remedies being subject to dispute settlement. The use of competition rules was considered as an alternative to safeguards and remedies – noting the importance that safety nets such as these were accessible to parties to the agreements.

Session 3: Standards in African regional integration arrangements

Independent Expert Abrie Du Plessis presented a comprehensive overview of standards, technical regulations and SPS measures and discussed how these can best be used to boost trade and integration without facilitating protectionism. The discussions suggested an approach that did not attempt to create new regimes but rather, implemented global standards where possible; sought harmonisation where appropriate, and rather than take its own path, improved on the WTO. This could include, for example, expanding transparency and enhancing dispute resolution. To do this, the focus should be on uplifting capacity in Africa to implement these global best practices and participate in ensuring these practices are suitable for developing economies.

In this context, Gerhard Erasmus provided a possible design approach to the CFTA, noting that SPS measures and technical regulations can prevent trade by not being transparent and not being based on scientific standards. To address this, there must be clear notification, consultation and certainty that litigation was possible – that is, the CFTA should provide a WTO-plus regime. As the CFTA moves forward, rather than focusing on the *acquis*, intra-African trade barriers should be identified and addressed. An umbrella agreement that does this could be agreed and ratified and variable geometry should be addressed under this agenda. Priority areas should be identified and have their own entry into force provisions. We can learn from the TFTA that permitting progress in areas of less contention and debate is more likely to achieve results.

Session 4: Private litigation, dispute resolution and community law developments

Malan Lindeque, Permanent Secretary, Ministry of Environment and Tourism of Namibia discussed actions against Namibian import quotas on dairy and poultry and emphasised the challenges in industrial development for Namibia under the SACU and SADC agreements, particularly given fiscal constraints. It is important for smaller and less developed economies to ensure that agreements clearly reserve powers to support development and industrialisation. To do this, ambiguities and design faults in agreements and their implementation need to be avoided (for example, the absence of an independent SACU Commission). In addition, other features, such as competition should be covered by agreements. It is critical to have the *right* rules and institutions in place. Institutions and forums need to be equipped to enable the development of community law.

William Mwanza, **tralac** Researcher discussed the role of private parties in the enforcement of regional agreements particularly through litigation in regional courts. This is within a framework of community law which entails interaction between regional and national institutions and laws. Lessons were drawn from cases brought by natural and legal persons

to the COMESA Court of Justice and the EAC Court of Justice. Cases in the latter court – involving the fundamental and operational principles of the EAC Treaty – particularly highlight the role of the regional court in ensuring compliance with Treaty obligations at the national level. An alternative dispute settlement mechanism, namely the Panel process of the Committee on Trade Remedies, exists in the EAC. This could be a faster and more technically advanced way of dealing with non-tariff barriers, though its main shortfall is that it does not currently extend to customs and border procedures. The role of the private sector in enforcing their rights in regional courts and lobbying Governments for enactment of Panel processes was emphasised. Great attention has to first be paid to the design of existing and new agreements – with regard to scope and coverage as well as crafting of specific provisions – to ensure a sound basis for effective rules-based governance of trade and integration on the African continent.

Henry Mutai, **tralac** Associate facilitated a lively discussion reflecting on the presentations covering the demand side for local products, the role of businesses in seeking efficiency and profits and the potential remedies for businesses.

tralac Board Chair and Chief Executive Officer, COMESA Competition Commission George Lipimile opened day 2 of the Conference, reflecting on the role of **tralac** and the challenges and importance of rules-based governance before participants began a discussion on connecting Africa for competitiveness.

Session 5: Connecting Africa for competitiveness

JB Cronje, **tralac** Researcher discussed how the quality of physical and digital infrastructure has a direct effect on competitiveness. The objective of Members of the African Union and the various RECs on the continent is to develop integrated regional and continental transport, energy, ICT and transboundary water networks. However, much more than the mere construction and connection of physical infrastructure is needed to create integrated networks and enhance competitiveness. In this regard, there is a case to be made for increased levels of international regulatory cooperation in various services sectors to maximise the benefits of globalisation and address collective challenges such as systemic risk in financial markets, air and water pollution, and human health and safety concerns. Another important motivation for international regulatory cooperation is to reduce international regulatory spill-overs. As a result, some of the priority areas for the CFTA and TFTA services negotiations should include the development of rules on the digital economy; mechanisms to facilitate the temporary movement of persons; stronger regulatory cooperation amongst regulators; and, the adoption of pro-competitive regulatory principles in sectors such as transport, energy and communication.

Willemien Viljoen, **tralac** Researcher reminded delegates that Sub-Saharan Africa is plagued by poor and underdeveloped infrastructure, lack of national and regional connectivity and inefficient logistics services. Transportation costs are the single most important obstacle to intra-regional trade in Africa due to numerous factors. These include the fragmentation of transport networks and the lack of connectivity, inefficient infrastructure, regulations regarding the transportation sector, lack of automation and interconnectedness and corruption. However, the improvement of physical infrastructure, in itself cannot reduce the cost of doing business in the region. The development of infrastructure must be follow an

integrated approach ensuring intermodal and hinterland connectivity within an effective, efficient and functional system. Increasing transportation efficiency, decreasing the demand for logistics services, investing in information systems for reliable information exchange, improving transparency and governance structures and regulatory reforms are essential to connect Africa to reduce costs and increase competitiveness.

Nigel Gwynne-Evans, Chief Director: African Industrial Development at South Africa's Department of Trade and Industry noted the prevalence of industrialisation plans and the disconnect between the rhetoric in these and the reality on the ground. He emphasised the importance of the details for moving to action and the key role of building state capacity to do this. This would require commitment from the political leadership, strong sectoral capability and a greater understanding of the policy space that countries have under the agreements they have made. Providing business with a voice, and responding to their needs would be critical to have real impact. South Africa has historically not supported productive capacity in the region, but there is more emphasis on this now and South Africa has an important role to play in this regard.

The design of agreements and plans was again discussed, with an important note that these must have very specific, practical, detailed and clear obligations to implement and that these obligations should be able to be monitored and implementation evaluated. Generally, monitoring and evaluation may be more important than creating new agreements and/or plans. It was recognised that progress towards greater trade and integration would be incremental, rather than big bang. Discussions on this topic also considered public and private sector roles and interactions, with one participant emphasising the need for balancing of private-sector led and public-sector led initiatives. For example, the Government must provide infrastructure, this cannot be done by the private sector alone.

Session 6: Walvis Bay harbour development, transport corridors and logistics hub

This point was picked up in the discussion on the Walvis Bay harbour development – a successful public-private partnership. Immanuel Shipanga, Manager – Projects & Funding at the Walvis Bay Corridor group presented an update on the project which aims to create the connections to increase intra- and inter-regional trade by creating alternative trade routes and reducing time and costs.

Klaus Schade, Independent Economist and tralac Board Member reflected on the port and associated infrastructure as an important part of Namibia's National Development plan. The physical infrastructure towards realisation of the goal was progressing well, but soft infrastructure should also be a focus – including human resource capacity, such as police, transport inspectors, operators and emergency personal.

Klaus also discussed the logistics sector in light of the Sustainable Development Goals ('SDGs'), noting that the sector needs to be prepared for increased demand for sustainable transport. There are four main SDGs relevant to the sector:

- SDG 3 – ensure healthy lives
- SDG 13 – combat climate change
- SDG 9 – build resilient infrastructure
- SDG 12 – sustainable production

These, as well as SADC Protocol on Transport, Communication and Meteorology needed to be incorporated into regional norms and standards in order to ensure sustainable development of the sector and to create the right conditions for liberalising transport in the region.

Session 7: Conclusions

The Conference was concluded with a discussion on the way forward for the CFTA. Batanai Chikwene, Policy Officer in the Department of Economic Affairs at the African Union Commission provided an update on negotiations and the process of the CFTA, emphasising that this was an important component of a broader project anchored on boosting intra-Africa trade. The African Union places value on the private sector being meaningfully engaged and encourages member states and their businesses to be actively involved in defining the negotiating principles.

Gerhard Erasmus and Trudi Hartzenberg of **tralac** discussed the design, architecture and sequencing of the agreement and negotiations, reiterating the importance of getting the negotiating principles defined to shape an agreement that would work for all stakeholders. There is a danger that principles would be defined such that it would be impossible to deliver on the objectives. CFTA negotiators can learn from the TFTA, but this is a member state driven process, and some member champions are needed to drive new approaches. The African Union Commission has an important role to play in proposing viable options to members and emphasising the commitment to a new modern arrangement – taking constant care that the negotiations are heading the right direction.

Participant feedback

‘I would really like to thank you for the opportunity that you gave me, this really marked the highest exposure of my entire work life. I would also like to take this opportunity to congratulate TRALAC for work well done during the 2016 annual conference. I found the material that was discussed there really important and very educational for some of us. I just wish for one thing after listening to all the experts who presented; IMPLEMENTATION! as this will enable us to see growth in our economies.’

‘The conference helped me to develop a new perspective in so far as trade-led development in Africa is concerned.’

‘Involvement of the private sector is an excellent dimension and should be continued.’

‘Thank you very much for great an opportunity such as this one you accorded me to learn and participate in the shaping of the regional integration tangent in Africa. As a young person, I feel that the deliberations we made ignite more passion in me to do whatever it is in

my small capacity to lend buoyancy to this cause. I am equally grateful to everyone I met and exchanged ideas with.'

'The outcome of the presentations and discussions is a huge challenge ahead for the integration process. Keep up the good work.'

'Thank you very much for the well organised conference. I had a lot of take home learning points. I enjoyed the discussions of the recent judgements in EAC and COMESA. Your efforts are not in vain as I use such issues in my lectures at National University of Science and Technology and in my discussions with government officials. The greatest gift you gave me was the tour of Walvis Bay Harbour. It opened my eyes. I have already initiated debate on the advantages and disadvantages of Zimbabwe operating a dry port at Walvis Bay. Whilst many thought that it would save no purpose, I believe our traders stand to benefit from the dry port.'

'A wonderful conference. One of the best out of the 4 or 5 I have attended – and those were already great. Good mix of academics and implementation challenges.'

'I just wish to express my appreciation for the wonderful learning experience at the conference. It was a very important learning curve and I also made a lot of contacts.'

Best experiences:

'Focus on implementation and practical aspects.'

'Update on CFTA.'

Recommendations:

'Provide definitions for jargon and terminologies.'

'The idea of hosting the Annual Conference in different countries is very commendable, and should be continued.'

'Industrialisation is now the most important priority in the region. Can we have same as the theme for the next conference (industrialisation, value chains, supply-side constraints etc).'

'I do not advocate cutting on the academic component too much as this is the added value TRALAC brings to the discussion.'