

COMMENTARY

Where to with African regional integration? Key messages from the recent Tralac Annual Conference 2016¹

By Simphiwe Ngqangweni²

The Trade Law Centre (tralac) and NAMC have a long-standing partnership that started ten years ago according to which the two institutions collaborate on certain research projects and also support each other's agendas through research capacity building and information sharing. On 7-8 April 2016, tralac held its annual conference in Swakopmund, Namibia and the NAMC was invited to attend and participate at this conference. Among the participants at the conference were various representatives of the public and private sectors, civil society, members of the diplomatic corps and members of the judiciary from southern and eastern Africa. The theme of the conference was **“Towards Rules-based Governance in African Trade and Integration?”**.

The presentations and discussions focused on the importance of good governance in the context of intra-African trade and regional integration. Rules-based governance is important as it guarantees that those in authority respect the rules, which in turn results in better governance through accountability and transparency (Erasmus, 2016)³. One of the central themes that permeated discussions at the Conference was that it is not the absence of a rules-based framework, but it is the lack of implementation of this framework that has frustrated efforts for Africa to integrate.

The desirability and necessity of African economic integration is largely not in dispute. In this regard, Madyo (2008: viii)⁴ argues: “...the benefits of REI [regional economic integration] make it imperative for it to remain the central pillar of Africa's development

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² Simphiwe Ngqangweni is Senior Manager: Markets and Economic Research Centre (MERC) at the NAMC

³ Erasmus G (2016). Why Rules-Based Governance Matters for African Trade and Integration. Presentation at Tralac Annual Conference 2016. Swakopmund, Namibia, 7 April 2016.

⁴ Madyo RM (2008). The Importance of Regional Economic Integration in Africa. MCom Thesis. Pretoria: UNISA [Online] Available at <http://uir.unisa.ac.za/bitstream/handle/10500/2075/dissertation.pdf?sequence=1%C2%A0>. [Accessed 16 April 2016]

agenda". De Melo & Tsikata (2014:5)⁵ add: "Small fragmented and isolated economies with resources distributed very unequally among them make a compelling case for African countries to integrate regionally to reap efficiency gains, exploit scale economies, and reduce the thickness of borders". However, it is largely an accepted fact that, despite the support from African governments, progress in African regional economic integration has been slow.

The factors behind the slow progress in African regional economic integration are often stated as, among others (Hartzenberg, 2011⁶; UNECA, 2010⁷):

- Commitment by governments to conflicting agendas in multiple regional integration arrangements
- Absence of sanctions (or failure to apply them, if they exist) for lack of implementation of legal instruments⁸
- Inadequate financial resources
- Macro-economic instability
- Conflicts and war
- Poor governance
- Disease prevalence
- African member states' multiple memberships to different regional economic communities (RECs)

Some steps have been taken through the African Union to adopt strategies for industrial development in realisation of the need for infrastructure that facilitates trade in goods and services and ultimately economic progress. The Programme for Infrastructure Development in Africa (PIDA), for example, is anchored on regional projects and programmes, and provides a common framework for the development of integrated regional and continental transport, energy, ICT and transboundary water networks (Tralac, 2016a)⁹. However, as Tralac (2016a) notes: "Much more than mere construction and connection of physical infrastructure is needed to create integrated networks and enhance competitiveness". Regulatory harmonisation across countries

⁵ De Melo J & Tsikata Y (2014). Regional integration in Africa: Challenges and prospects. WIDER Working Paper 2014/037. [Online] Available at http://www.imvf.org/ficheiros/file/wp2014-037_1.pdf. [Accessed 16 April 2016]

⁶ Hartzenberg T (2011). Regional Integration in Africa. WTO Staff Working Paper ERSD-2011-14. [Online] Available at https://www.wto.org/english/res_e/reser_e/ersd201114_e.pdf. [Accessed 16 April 2016]

⁷ UNECA (2010). *Assessing Regional Integration in Africa IV: Enhancing Intra-African Trade*. Addis-Ababa: UNECA. [Online] Available at www.uneca.org/publications/assessing-regional-integration-africa-iv. [Accessed 16 April 2016]

⁸ For example, the SADC Tribunal was suspended in 2010 due to Zimbabwe's dissatisfaction with the tribunal's decision to deem Zimbabwe to be in breach of one of the SADC treaties (Hartzenberg, 2011, citing Afadameh-Adeyemi & Kalula, 2011). This is one of the cases that was cited at the recent tralac Conference 2016 as an example of an African dispute resolution mechanism gone wrong.

⁹ Tralac (2016a). Connecting Africa for Competitiveness. Annual Conference 2016 Brief.

is equally important, especially in the context of global value chains that transcend national regulatory jurisdictions.

So where to with African regional economic integration? There is currently a pending matter of the conclusion of the Tripartite Free Trade Area (TFTA), which is a proposed African free trade agreement between the Common Market for Eastern and Southern Africa (COMESA), Southern African Development Community (SADC) and East African Community (EAC). At the recent Tralac Conference 2016, a question was raised as to whether the TFTA could be a building block for an envisaged African Continental Free Trade Area (CFTA). Due to the fact that the TFTA is not yet a concluded agreement, it does not qualify as a building block for the CFTA. The CFTA guidelines themselves do not mention the TFTA as a building block for the CFTA. The TFTA *acqui* is, however, mentioned in the CFTA as background information (Tralac, 2016b)¹⁰.

According to Tralac (2016b), for CFTA negotiations to progress, they should avoid the pitfalls of the TFTA negotiations, which became bogged down in long drawn out tariff offers and counter-offers, instead of starting off with areas where quicker progress could be made, for example, Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT). In conclusion, in his presentation, Abrie du Plessis¹¹, a trade law consultant summed up the considerations for the CFTA as follows:

- Accept that the RECs will remain
- Be very clear on the CFTA objectives
- Try not to “renegotiate” the WTO texts
- Add clearly defined improvements on WTO/TBT/SPS
- Revisit the concept of regional harmonisation
- Add best practices conceived by the RECs
- Consider the outputs of the WTO TBT and SPS Committees
- Avoid duplication

Despite the challenges facing regional integration, African member states should take heart from progress that has been made in various areas. For example, according to UNECA (2010), “a number of RECs have taken action to create free trade areas and customs unions; they have also introduced community passports to ease movement of goods and persons; and established macroeconomic convergence targets. In addition, a number of the RECs are harmonizing their business laws and pursuing vigorously their implementation with the aim of promoting trans-boundary businesses and investments in Africa. Significant strides have also been made in strengthening infrastructure and Information and Communication Technology (ICT) development on the continent, through various programmes and initiatives at the national, regional and continental levels...[However]...a lot still remains to be done”.

¹⁰ Tralac (2016b). Is the Tripartite FTA a Building Block for the CFTA? Tralac Conference 2016 Brief.

¹¹ Du Plessis A (2016). Standards in African Regional Integration Arrangements. Presentation at Tralac Annual Conference 2016. Swakopmund, Namibia, 7 April 2016.