



Options: Approaches and Modalities for the CFTA Services  
Negotiations

Training Workshop on Trade in Services Negotiations for  
African Union Continental Free Trade Area Negotiations

Trudi Hartzenberg & JB Cronjé

24-28 August 2015

[trudi@tralac.org](mailto:trudi@tralac.org) / [jb@tralac.org](mailto:jb@tralac.org)

# Launch of the CFTA Negotiations: AU Assembly Decision 15 June 2015

## Adopted

- The Draft Declaration on the launch of Negotiation for the establishment of the CFTA
- The objectives and principles for Negotiating the CFTA
- The indicative Roadmap for the Negotiation and establishment of the CFTA
- The Terms of Reference for the CFTA Negotiating Forum (CFTA-NF)
- The institutional arrangements for the CFTA Negotiation

This follows the 18<sup>th</sup> Ordinary Session of the Assembly of the Union at which the decision to establish the CFTA, and to 'operationalize' it by indicative date 2017, was taken

# CFTA in the context of the Abuja Treaty

## CFTA Objectives

‘Within the broader framework of the Abuja Treaty Establishing the African Economic Community, the objective of launching negotiations for the CFTA is to achieve a comprehensive and mutually beneficial trade agreement among the Member States of the African Union...’

# More specific objectives

---

- Enhance competitiveness at all levels.....
- ..accelerate the growing diversification and dynamism of intra-African trade..
- ..in the context of boosting intra-African trade, and realizing the transformational potential of increased trade among African countries, to create a **freer market for goods and services**
- Resolve the challenges of overlapping memberships and expedite the regional and continental integration processes

# Objectives re scope and sequencing of negotiations

Scope: Trade in Goods, Trade in Services, Investment, IPR, Competition Policy

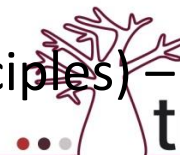
1) Two separate legal instruments (trade in goods, trade in services)

What about trade-related matters – perhaps another/several more legal instruments?

2) Negotiations will be conducted in 2 phases:

- Phase 1: Simultaneous negotiation of trade in goods and trade in services (separate tracks)
- Phase 2: Trade-related issues (competition, investment, IP), negotiations to be undertaken by dedicated structures

What is the status of Objectives (and Guiding Principles) – can they be amended?



# Bigger Picture - Objectives and Guiding Principles contain references to:

---

- Boosting intra-African Trade (BIAT)
- Programme for Infrastructure Development in Africa (PIDA)
- Action Plan for Accelerated Industrial Development for Africa (AIDA)
- Conference of African Ministers of Industry (CAMI) Workplan

Note: Guiding Principles are listed but not clarified/elaborated

# Guiding Principles

- Negotiations shall be MS/REC/Customs territories driven with support and its structures
- RECs FTAs are building blocks for the CFTA
- **(P)reservation of *acquis***
- Variable geometry
- Flexibility, S&D Treatment, Transparency and disclosure of information
- Substantial liberalisation
- MFN Treatment
- National Treatment
- Reciprocity
- Decisions shall be taken by consensus
- Adoption of Best Practices

# Trade in services in the CFTA context

What do we want to achieve through the CFTA (CFTA is not an end in itself)

Trade in services agreement – a means to achieve.....

What is necessary for a CFTA that really addresses the needs of investors, producers, consumers...

Taking stock:

- services sector developments (sector intelligence needs to be gathered urgently at MS and regional levels)
- regulatory audits (including institutional regulatory architecture – at MS and regional levels)
- economic linkages and relationships (inter-sectoral; goods-services...)
- policy/regulatory/governance linkages (services regulation/investment/**competition**) – what exists at MS and regional levels?
- TFTA and CFTA services are likely to take place at the same time.....

**A TiS Agreement and CFTA that also support integration into the global economy (focus on competitiveness)**



# Possible Approaches and Modalities [1]

---

- TiS legal framework provide the architectural elements of the agreement including Most-Favoured-Nation treatment; market access; national treatment; rules of origin; approaches to domestic regulation including convergence and recognition of academic and professional qualifications; obligations on transparency; rules on government procurement, subsidies and emergency safeguards; and, institutional settings to ensure implementation and settlement of disputes.
- Level of results depend not on Positive/Negative/Hybrid Scheduling technique but on commitment to achieve particular outcomes
- Dominant followed approach followed in RECs



# Possible Approaches and Modalities [2]

---

Regardless of scheduling approach, should consider disciplines to secure credibility of commitments and prevent erosion by future or technical changes (and to overcome weakness of GATS):

- Standstill to lock-in applied policy regime
- Phase-in commitments at set future dates to provide adequate time for countries to undertake reforms
- Automatic binding of autonomous liberalisation to keep commitments on par with policy status quo after entry into force
- Automatic coverage of any new services that may emerge over time
- National treatment as horizontal discipline (reservations)
- Stronger transparency requirements (disclosure of regulatory restrictions)
- Classification: W/T/120 including proposals for reclassification, CPC (as revised), ILO International Standard Classification of Occupations



# Possible Approaches and Modalities [3]

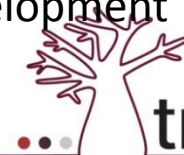
---

- Will market access commitments alone enhance integration and achieve other objectives?
- Countries retain regulatory discretion by making no commitments or by making commitments in areas granting exceptions (Annex on Financial Services; Annex on Movement of Natural Persons; GATS Article XIV)
- Experiences from RECs and WTO show capacity constraints to implement commitments; unawareness of their commercial meaning; and their effect on domestic policy
- Appropriate regulation should be in place whether or not a sector is liberalised
- Sound regulatory framework is precondition to liberalisation

# Why do countries regulate services? [1]

---

- In many cases, governments moved from being providers of services to regulators.
- Reforms must bring about competition otherwise restructuring of state monopolies will only transfer monopoly rents from public to private owners
- Reforms require formulation of new **regulation**, re-regulation to ensure quality and efficiency as well as establish appropriately mandated **regulatory bodies**
- The purpose of regulation is to:
  - increase welfare by correcting market distortions, minimise impact of externalities, prevent anti-competitive practices
  - Information asymmetries
    - Consumers cannot always assess quality
    - Therefore regulations on competence and conduct of supplier –to control the quality of services provided
  - Attain societal values such as environmental protection, health and safety, universal access, consumer protection and to ensure markets contribute to poverty reduction and inclusive and sustainable development



# Services regulatory challenges [2]

---

All regulatory bodies must address 2 fundamental issues:

- Regulate effectively – must be able to obtain necessary information on market practices, costs and revenues of service suppliers, consumer demand, changes in technology affecting the sector, the macroeconomic environment
- Free from political or commercial capture – mechanisms are needed to ensure decisions and regulation do not favour a particular group at the expense of the general economic good
- Overcoming these challenges requires resources, expertise and strong political commitment

# Services regulatory challenges [3]

---

- Starting point for development of regulatory institutions is defining the statutory mandate of an institution – reflect its objectives, functions and modus operandi and relationship to government
- design of objective criteria-based and transparent rules, which reduce the scope for discretionary decision making,
- Most used model especially in infrastructure sectors- establishment of independent regulators
  - Ensure regulator is free from political and commercial influence
  - Independence does not mean absence of accountability
    - Accountable to parliament, government and the public
- Self-regulation more common in professional services

# How do domestic regulatory concerns translate into international concerns? [1]

---

- Countries face common regulatory challenges not limited to national territories
- Potential gains from international regulatory cooperation – trades off between maintaining nationally optimal regulations against the benefits of integrated markets
- Examples:
  - Governments take different approaches to the regulation of personal data collected by private companies. Cooperation can ensure trade in digital services and free data flows address divergent standards of privacy protection
  - Many communication regulators are confronted with reconciling previously distinct regulatory frameworks – convergence of telecommunications, information technology and broadcasting
  - The 2008 financial crisis highlighted the global cost of a poorly regulated financial sector.

# How do domestic regulatory concerns translate into international concerns? [2]

---

## – Internal and external dynamic of liberalisation

- Internal concerns

- In practice, it is privatisation and subsequent liberalisation that drives regulatory reform
- Concerns that introduction of domestic and foreign competition carry costs and risks
  - » For example, if prices are artificially kept low through cross-subsidisation or government financial support, liberalisation may result in price increases
  - » Risk that private suppliers would ‘skim off’ most profitable clients and cease to service unprofitable clients or areas
- Regulatory capture may prevent introduction of new regulation or institutions.
- Regulatory weakness may be used as argument against liberalisation – political commitment can reverse this



# How do domestic regulatory concerns translate into international concerns? [3]

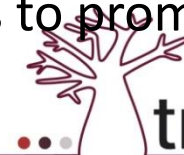
---

- External concerns
  - How to deal with differences in regulatory requirements - raise the cost of compliance for service suppliers
  - Weakness in domestic regulatory framework adversely affect services exports. As domestic service suppliers get use to operating within a modern standards-based regulatory framework, they will also develop the capacity that can enable them to meet requirements in foreign markets and develop potential export opportunities.
  - Weak regulatory framework hampers inward investment and the inflow of services, but also inhibits the outward orientation of local service suppliers

# What can be done in CFTA? [1]

---

- Adopt **Government-wide disciplines** to regulatory reform to address challenges of interconnectedness of services sectors (provide evidence for necessity?)
  - Adhere to the principles of open government
  - Establish mechanisms to foster regulatory quality
  - Integrate Regulatory Impact Assessment into early stages of the policy process
  - Develop a policy covering the roles and functions of regulatory agencies
  - Ensure for the review of legality and procedural fairness of regulation
  - Apply appropriate risk management practices to ensure regulation is targeted and effective
  - Adopt appropriate coordination mechanisms to promote regulatory coherence
  - Consider international standards



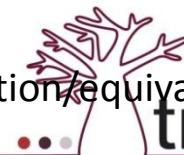
# What can be done in CFTA? [2]

---

- Regulatory cooperation
  - Long history of regulatory cooperation in postal and communication, financial services, transportation, education and some professions – interdependence demand a coordinated regulatory response
  - Scope and form of regulatory cooperation will differ across services sectors
  - Does not prevent regulators from the responding to changes in the market or technology
  - Can promote greater understanding of and confidence in the standards, requirements and procedures amongst regulators
  - Can promote less trade restrictive means of achieving public objectives
  - Opportunity to participate and influence the setting of international standards

# What can be done in CFTA? [3]

- Regulatory cooperation to address specific regulatory issues at sector level (Guidelines/Benchmarks):
  - Communications services sector
    - The Telecoms Reference Paper provides a set of regulatory principles for trade in telecommunication services
    - It provides principles for the prevention of anti-competitive practices, interconnection, universal access, transparency, licensing criteria, independence of regulators and the allocation of scarce resources
    - Regulators still face challenges on convergence of different services and activities; new technologies; spectrum management; international mobile roaming charges; call termination charges ; cybercrime; identity theft; copyright infringement; inappropriate content
  - Financial services sector
    - Prudential soundness and stability of the financial system
    - Prudential supervision of individual financial services firms
    - Consumer protection and market conduct
    - Expanding access to financial services
    - Combat financial crime
- Regulatory cooperation to achieve mutual recognition (harmonisation/equivalence) of licenses, qualifications and standards



Do you think a country would object against liberalisation if it is assured that imported services are adequately regulated?