

The representatives of:

THE REPUBLIC OF BOTSWANA,

THE KINGDOM OF LESOTHO,

THE REPUBLIC OF MOZAMBIQUE,

THE REPUBLIC OF NAMIBIA,

THE REPUBLIC OF SOUTH AFRICA,

THE KINGDOM OF SWAZILAND

hereinafter referred to as the "Southern African Development Community Economic Partnership Agreement States ("the SADC EPA States"),

of the one part, and

THE KINGDOM OF BELGIUM,

THE REPUBLIC OF BULGARIA,

THE CZECH REPUBLIC,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE REPUBLIC OF ESTONIA,

IRELAND,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

THE REPUBLIC OF CROATIA,

THE ITALIAN REPUBLIC,

THE REPUBLIC OF CYPRUS,

THE REPUBLIC OF LATVIA,

THE REPUBLIC OF LITHUANIA,

THE GRAND DUCHY OF LUXEMBOURG,

HUNGARY,

THE REPUBLIC OF MALTA,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE REPUBLIC OF POLAND,

THE PORTUGUESE REPUBLIC,

ROMANIA,

THE REPUBLIC OF SLOVENIA,

THE SLOVAK REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Contracting Parties to the Treaty on European Union and the Treaty on the functioning of the European Union, hereinafter referred to as the "Member States of the European Union"

and

THE EUROPEAN UNION,

of the other part,

hereinafter referred to as the "Southern African Development Community Economic Partnership Agreement States ("the SADC EPA States"),

of the other part,

meeting at Kasane on the tenth day of June in the year two thousand and sixteen for the signature of the Economic Partnership Agreement between the European Union and its Member States, of the one part,

and the SADC EPA States, of the other part, have at the time of signature of the Agreement:

– adopted the following Annexes, Protocols and Declarations:

ANNEX I: Customs duties of the EU on products originating in the SADC EPA States

ANNEX II: Customs duties of SACU on products originating in the EU

ANNEX III: Customs duties of Mozambique on products originating in the EU

FINAL ACT
ATA FINAL
ЗАКЛЮЧИТЕЛЕН АКТ
АСТА FINAL
ZÁVĚREČNÝ AKT
SLUTAKT
SCHLUSSAKTE
LÖPPAKT
ТЕΛΙΚΗ ΠΡΑΞΗ
ACTE FINAL
ZAVRŠNI AKT
ATTO FINALE
NOBEIGUMA AKTS
BAIGIAMASIS AKTAS
ZÁRÓOKMÁNY
ATT FINALI
SLOTAKTE
AKT KOŃCOWY
ACT FINAL
ZÁVEREČNÝ AKT
SKLEPNA LISTINA
PÄÄTÖSASIAKIRJA
SLUTAKT

Done at Kasane on the tenth day of June in the year two thousand and sixteen.

Feito em Kasane, em dez de junho de dois mil e dezasseis.

Съставено в Казан на десети юни две хиляди и шестнадесета година.

Hecho en Kasane el diez de junio de dos mil dieciséis.

V Kasane dne desátého června dva tisíce šestnáct.

Udfærdiget i Kasane, den tiende juni to tusind og seksten.

Geschehen zu Kasan am zehnten Juni zweitausendundsechzehn.

Kahe tuhande kuueteistkümnenda aasta juunikuu kümnendal päeval Kasanes.

Εγινε στο Κασάνε, στις δέκα Ιουνίου δύο χιλιάδες δεκαέξι.

Fait à Kasane, le dix juin deux mille seize.

Sastavljeno u Kasaneu desetog lipnja godine dvije tisuće šesnaeste.

Fatto a Kasane, addì dieci giugno duemilasedici.

Kasanē, divi tūkstoši sešpadsmītā gada desmitajā jūnijā.

Priimta du tūkstančiai šešioliktą metų birželio dešimtą dieną Kasanėje.

Kelt Kasanében, a kétezer-tizenhatodik év június havának tizedik napján.

Magħmul f'Kasane fl-ghaxar jum ta' Ġunju fis-sena elfejn u sittax.

Gedaan te Kasane, tien juni tweeduizend zestien.

Sporządzono w Kasane dnia dziesiątego czerwca roku dwa tysiące szesnastego.

Întocmit la Kasane, la zece iunie două mii şaisprezece.

V Kasane desiateho júna roku dvetisíc šestnástʹ.

V Kasaneju, deseti dan junija leta dva tisoč šestnajst.

Tehty Kasanessa kymmenentenä päivänä kesäkuuta vuonna kaksituhattakuusitoista.

Som skedde i Kasane den tionde juni år tjugohundrasexton.

ANNEX IV: Agricultural safeguards

ANNEX V: BLNS transitional safeguards

ANNEX VI: SPS priority products and sectors

PROTOCOL 1: Concerning the Definition of the Concept of 'Originating Products' and
Methods of Administrative Cooperation

PROTOCOL 2: Mutual Administrative Assistance in Customs Matters

PROTOCOL 3: Geographical Indications and Trade in Wines and Spirits

PROTOCOL 4: Concerning the relationship between the TDCA and this Agreement

IN WITNESS WHEREOF, the undersigned Plenipotentiaries have signed this Final Act.

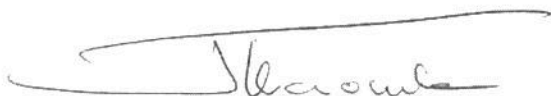
For the Republic of Botswana

A handwritten signature in black ink, appearing to be 'Dumiso', written in a cursive style.

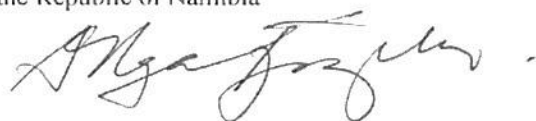
For the Kingdom of Lesotho

A handwritten signature in black ink, appearing to be 'Jaffa', written in a cursive style.

Pela República de Moçambique

A handwritten signature in black ink, appearing to be 'Ikeane', written in a cursive style.

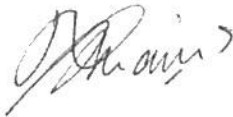
For the Republic of Namibia

A handwritten signature in black ink, appearing to be 'Anga Joseph', written in a cursive style.

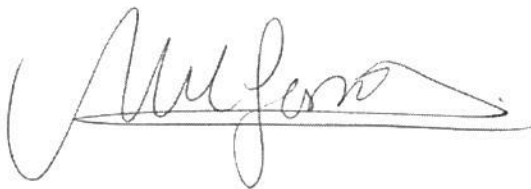
For the Republic of South Africa



For the Kingdom of Swaziland



Za Европейския съюз
Por la Unión Europea
Za Evropskou unii
For Den Europæiske Union
Für die Europäische Union
Euroopa Liidu nimel
Για την Ευρωπαϊκή Ένωση
For the European Union
Pour l'Union européenne
Za Europejską uniję
Per l'Unione europea
Eiropas Savienības vārdā –
Europos Sąjungos vardu
Az Európai Unió részéről
Għall-Unjoni Ewropea
Voor de Europese Unie
W imieniu Unii Europejskiej
Pela União Europeia
Pentru Uniunea Europeană
Za Európsku úniu
Za Evropsko unijo
Euroopan unionin puolesta
För Europeiska unionen



Voor het Koninkrijk België
Pour le Royaume de Belgique
Für das Königreich Belgien



Deze handtekening verbindt eveneens de Vlaamse Gemeenschap, de Franse Gemeenschap, de Duitstalige Gemeenschap, het Vlaamse Gewest, het Waalse Gewest en het Brussels Hoofdstedelijk Gewest.

Cette signature engage également la Communauté française, la Communauté flamande, la Communauté germanophone, la Région wallonne, la Région flamande et la Région de Bruxelles-Capitale.

Diese Unterschrift bindet zugleich die Deutschsprachige Gemeinschaft, die Flämische Gemeinschaft, die Französische Gemeinschaft, die Wallonische Region, die Flämische Region und die Region Brüssel-Hauptstadt.

За Република България



Za Českou republiku



For Kongeriget Danmark



Für die Bundesrepublik Deutschland

A handwritten signature in black ink, appearing to be 'D. H. Müller', written in a cursive style.

Eesti Vabariigi nimel

A handwritten signature in black ink, appearing to be 'J. S. S.', written in a cursive style.

Thar cheann Na hÉireann
For Ireland

A handwritten signature in black ink, appearing to be 'P. J. S.', written in a cursive style.

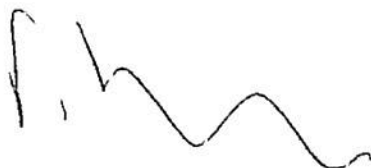
Για την Ελληνική Δημοκρατία

A handwritten signature in black ink, appearing to be 'A. D.', written in a cursive style.

Por el Reino de España

A handwritten signature in black ink, appearing to read 'F. Destis', with a horizontal line drawn underneath.

Pour la République française

A handwritten signature in black ink, consisting of a series of connected loops and a long horizontal stroke at the end.

Za Republiku Hrvatsku

A handwritten signature in black ink, appearing to be 'Ist R', with a large 'R' and a long horizontal stroke.

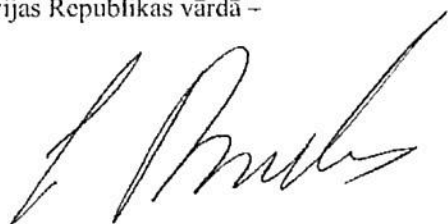
Per la Repubblica italiana

A handwritten signature in black ink, appearing to be 'G. Rom', with a large 'G' and a long horizontal stroke.

Για την Κυπριακή Δημοκρατία



Latvijas Republikas vārdā –



Lietuvos Respublikos vardu



Pour le Grand-Duché de Luxembourg



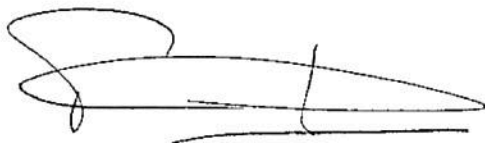
Magyarország részéről



Għar-Repubblika ta' Malta



Voor het Koninkrijk der Nederlanden



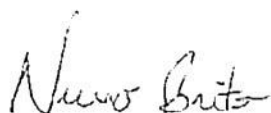
Für die Republik Österreich



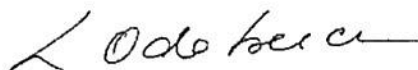
W imieniu Rzeczypospolitej Polskiej



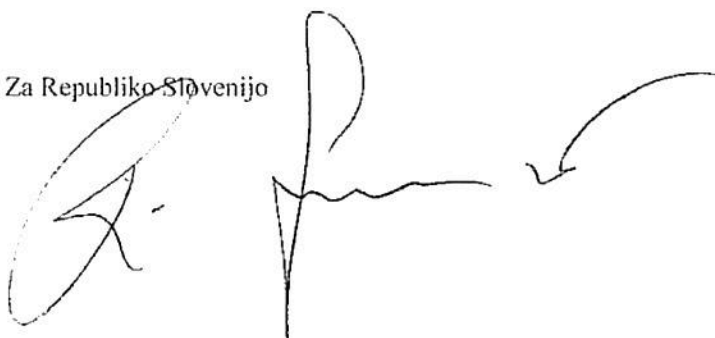
Pela República Portuguesa



Pentru România



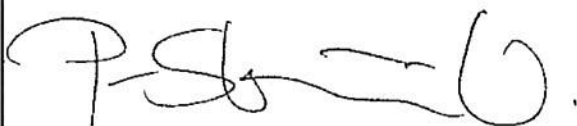
Za Republiko Slovenijo



Za Slovenskú republiku



Suomen tasavallan puolesta
För Republiken Finland



För Konungariket Sverige



For the United Kingdom of Great Britain and Northern Ireland



**the doj & cd**

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE CHIEF STATE LAW ADVISER

Private Bag X81, PRETORIA, 0001, Tel (012) 315 1130, Fax (012) 315 1628, Momentum Centre East Tower 12th Floor,
Pretorius Street; Office Email: OCSLAPretoria@justice.gov.za and ocsla@justice.gov.za

534/2015/16A&B
Adv. WJJ Nel
(012) 315 1125
JNel@justice.gov.za

26 February 2016

Mr L October
Director-General
Department of Trade and Industry
Private Bag X 84
PRETORIA
0001

Dear Mr October

Attention: Ms V Gilbert

REVISED ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE EUROPEAN UNION AND ITS MEMBER STATES, OF THE ONE PART, AND THE SADC EPA STATES, OF THE OTHER PART: YOUR E-MAIL OF 9 FEBRUARY 2016

INTRODUCTION

1.1 The Department of Trade and Industry has submitted the revised text of the "Economic Partnership Agreement between the European Union and its Member States, of the One Part, and the SADC EPA States, of the Other Part" (hereinafter referred to as the "draft Agreement") to us for scrutiny. We have previously scrutinised the draft Agreement under caption of our opinion No.149/2014/15A&B dated 21 July 2014 (hereinafter referred to as "our previous opinion") in which opinion we have discussed the provisions of the draft Agreement comprehensively. We have again scrutinised the draft Agreement in terms of *paragraph 5.20(a) of the Manual on Executive Acts of the President of the Republic of South*

Africa and with reference to *Chapter 5 of the Constitutional Handbook for Members of the Executive*, the Constitution of the Republic of South Africa, 1996 ('the Constitution') and other relevant legislation.

1.2 According to the Department the draft Agreement is the final version of the multi-lateral agreement. In the light thereof and since we have already previously indicated the necessary drafting changes, we have refrained from suggesting amendments to the drafting form and style of the draft Agreement.

1.3 There are only a few substantial inclusions in the draft Agreement. Apart from that and some changes in the numbering of the Articles the draft Agreement appears to be in essence the same as the Agreement previously scrutinised by us.

COMMENTS ON THE NEW PROVISIONS

Ad Article 23.5

2.1 Paragraph 5 of Article 23 provides that at the date of entry into force of the draft Agreement, the EU shall notify its list of basic duties, to which the tariff reduction commitments set out in the draft Agreement apply, to the SACU Secretariat and the Ministry of Industry and Trade of Mozambique. At the date of entry into force of the draft Agreement, SACU and Mozambique shall accordingly notify their respective lists of basic duties, to which the tariff reduction commitments set out in the draft Agreement apply, to the European Commission. After this notification each party shall make public each of these lists according to their own internal procedures and within one month after the exchange of the notifications. The Trade and Development Committee shall furthermore, at its first meeting after notification and publication, adopt the lists of basic duties communicated by the Parties or SACU, as the case may be. The provisions of paragraph appear to be in order.

Ad Article 26

2.2 Article 26 provides for export duties or taxes and according to paragraph 1 thereof no new customs duties or taxes imposed on or in connection with the exportation of goods shall be introduced, nor shall those already applied be increased, in the trade between the Parties from the date of entry into force of the Agreement, except as otherwise provided for in this Article.

2.3 However, in terms of paragraph 2 in exceptional circumstances, where justified for specific revenue needs, or where necessary for the protection of infant industries or the environment, or where essential for the prevention or relief of critical general or local shortages of foodstuffs or other products essential to ensure food security, Botswana, Lesotho, Namibia, Mozambique and Swaziland may introduce, after consultation with the EU, temporary customs duties or taxes imposed on or in connection with the exportation of goods, on a limited number of additional products. According to paragraph 3 in exceptional circumstances, where the SADC EPA States can justify industrial development needs, those SADC EPA States may also introduce temporary customs duties or taxes imposed on or in connection with the exportation of a limited number of products to the EU. It is further provided that a SADC EPA State wishing to introduce such temporary custom duties or taxes shall notify the EU of such a duty, providing all relevant information and motivation and shall consult with the EU if the EU so requests. Such temporary duties or taxes shall only be applied on a total number of eight (8) products, as defined at an HS6 tariff line level, or in case of *'ores and concentrates'* at an HS4 tariff line level, per SADC EPA State at any given time and shall not be applied for a period exceeding twelve (12) years in total. This period can be extended or reinstated for the same product in agreement with the EU.

2.4 Paragraph 4 provides that the following conditions shall apply to paragraph 3 but not to paragraph 2:

- (a) The SADC EPA State shall for the first six (6) years from the date of introduction of an export tax or duty exempt from the application of that tax or duty exports to the EU of an annual amount equal to the average volume of exports to the EU of such product over the three (3) years preceding the date of introduction of the tax or duty. The SADC EPA State shall from the seventh year following the introduction of the said tax or duty until its expiry pursuant to paragraph 3, exempt from the application of the duty or tax, exports to the EU on an annual amount equal to 50 per cent of the average volume of exports to the EU of such product over the three years preceding the date of introduction of the tax or duty; and
- (b) export duties or taxes shall not exceed 10 per cent of the ad valorem export value of the product.

2.5 It is further provided that any more favourable treatment consisting in or in relation to customs duties or taxes applied by the SADC EPA States to exports of any product destined for a major trading economy shall, from the entry into force of the draft Agreement, be accorded to the like product destined for the territory of the EU. Whenever a SADC EPA State has reasonable doubts as to whether a consignment of a product to which export duties shall not apply by virtue of paragraphs 1, 3 and 4 has been re-exported from, or re-

routed without reaching, the EU to one or more third countries, that SADC EPA State may raise this matter at the Trade and Development Committee. The Trade and Development Committee shall then examine the matter within ninety (90) days. After the examination, if the Trade and Development Committee takes no decision, the customs authorities of the concerned SADC EPA State may request the Trade and Development Committee to decide that the importer of the concerned product into the EU make a declaration that the imported product will be processed in the EU and will not be re-exported to third countries. If, after a system using such declarations has been in operation for at least ninety (90) days, a SADC EPA State continues to have reasonable doubts as to whether a consignment of a product to which export duties shall not apply by virtue of paragraphs 1, 3 and 4 is re-exported from, or re-routed without reaching, the EU to one or more third countries, that SADC EPA State may inform the Trade and Development Committee of the grounds of its concerns.

2.6 Having followed these steps, should no solution be found within thirty (30) days, the concerned SADC EPA State may impose effective measures to prevent such circumvention provided that these measures are the least trade-restrictive and exclude operators who have proven not to be involved in the process of circumvention. The retroactive reinstatement of export duties on the consignment that has been re-exported from the EU to one or more third countries may offer an alternate option.

2.7 The Parties further agree to review the provisions of this Article in the Joint SADC EPA States – EU Council no later than three years after the entry into force of the draft Agreement, taking fully into account their impact on development and diversification of the SADC EPA States' economies.

2.8 The Department's attention is specifically drawn to the provisions of paragraphs 1 to 3 of this Article and the effect thereof.

Ad Article 35

2.9 This Article deals with agricultural safeguards and paragraph 1 thereof provides that notwithstanding Article 34, a safeguard measure in the form of an import duty may be applied if, during any given twelve-month period, the volume of imports into SACU of an agricultural product listed in Annex IV originating in the EU exceeds the reference quantity for the product therein indicated.

2.10 Paragraph 2 further provided that a duty which shall not exceed 25 per cent of the current WTO bound tariff or 25 percentage points, whichever is higher, may be imposed to

the agricultural products referred to in paragraph 1. Such duty shall, however, not exceed the prevailing MFN applied rate.

2.11 It is further provided that safeguard measures referred to in this Article shall be maintained for the remainder of the calendar year or five months, whichever is the longer. Safeguard measures referred to in this Article shall not be maintained or applied with respect to the same goods at the same time as-

- (a) a general bilateral safeguard measure in accordance with Article 34;
- (b) a measure under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards; or
- (c) a special safeguard measure under Article 5 of the WTO Agreement on Agriculture.

Safeguard measures referred to in this Article shall also be implemented in a transparent manner. Within ten days after applying such a measure, SACU shall notify the EU in writing and shall provide relevant data concerning the measure. On request, SACU shall consult the EU regarding the application of the measure. SACU shall also notify the Trade and Development Committee within thirty days after such imposition.

2.12 It is also provided that the implementation and operation of this Article may be the subject of discussion and review in the Trade and Development Committee. On request of either Party, the Trade and Development Committee may review the reference quantities and agricultural products as provided for in this Article. The provisions of this Article may only be applied during the period of twelve years from the date of entry into force of the draft Agreement.

2.13 The Department's attention is again specifically drawn to the provisions of paragraphs 1 to 3 of this Article and the effect thereof.

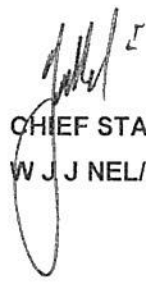
Ad Article 113 – Entry into Force

2.14 In our previous opinion we opined that in our view the draft Agreement clearly provides for ratification of the Agreement in accordance with the applicable constitutional or internal rules and procedures of each Party, and that since it is a multilateral agreement it falls within the scope of section 231(2) of the Constitution and will therefore bind the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces. We reiterate our opinion in this regard.

3. We furthermore reiterate the remainder of our comments in our previous opinion with regard to the draft Agreement.

4. Subject to our aforementioned comments and our comments in our previous opinion, no provision of the proposed draft Agreement is, as far as we could ascertain, in conflict with the domestic law of the Republic of South Africa.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'W J J Nel/A Johaar', written over the typed name.

CHIEF STATE LAW ADVISER
W J J NEL/A JOHAAR



international relations & cooperation

Department:
International Relations and Cooperation
REPUBLIC OF SOUTH AFRICA

OFFICE OF THE CHIEF STATE LAW ADVISER (INTERNATIONAL LAW)
Private Bag x 152, PRETORIA, 0001 Tel: +27 12 351 0857 Fax: +27 12 329 1721

10/16/3/1
RO 081/2016

SV Dhlomo-Imieka
Directorate: European Organisations

FINAL TEXT OF THE ECONOMIC PARTNERSHIP AGREEMENT BETWEEN THE EUROPEAN UNION AND ITS MEMBERS STATES AND THE SADC EPA STATES

1. Your request for a legal opinion on the finalised text of the "Economic Partnership Agreement between the European Union and its Member States, of the One Part, and the SADC EPA States, of the Other Part", bears reference. " (hereinafter "the Agreement"), bears reference.
2. We understand that this is the finalised text of the Agreement after the process of "legal scrubbing" has been completed, and that it is intended to be signed during a meeting from 9 to 10 June 2016 before the expiration of European preferences accorded to SADC States.
3. This Office has done two previous legal opinions on the text (number 249 of 8 August 2014 and number 358 of 24 October 2014) and was also part of the "scrubbing" that took place in Brussels in October 2015. We therefore find the text acceptable from an international law perspective.
4. As regards the procedures for obtaining approval for signing of the Agreement, we refer to paragraphs 5.1 and 5.2 of our legal opinion number 249/2014.
5. Article 113(1) provides that the Agreement shall be signed, ratified or approved in accordance with the applicable constitutional or internal rules and procedures of each Party. Article 113(2) then provides that the Agreement shall enter into force thirty days after the deposit of the last instrument of ratification, acceptance or approval.
6. This means that a distinction is drawn between the signing of the Agreement on the one hand, and the ratification/acceptance/approval thereof on the other: only

CONFIDENTIALITY NOTE:

This legal opinion might contain information that is privileged and confidential. If the reader is not the intended recipient, or the employee or agent responsible for delivering the opinion to the intended recipient you are hereby notified that any dissemination, distribution, or copying the documentation is strictly prohibited. If you have received this communication in error, please notify the Office of the Chief State Law Adviser (IL) immediately by telephone, and return the original message to the Office of the Chief State Law Adviser (IL).

ratification, acceptance or approval can result in its entry into force. Consequently, the Agreement will also have to be ratified by South Africa. The procedures regarding ratification by means of Parliamentary approval have been outlined in paragraph 5.3 of the aforementioned opinion.

7. Article 113(3), Article 113(4) and Article 113(7) read as follows:

“(3) Pending entry into force of this Agreement, the EU and the SADC EPA States agree to apply the provisions of this Agreement which fall within their respective competences (“provisional application”). This may be effected either by provisional application, where possible, or by ratification of this Agreement.

(4) This Agreement shall be applied provisionally between the EU and a SADC EPA State ten (10) days after either the receipt of notification of provisional application from the EU or of ratification or provisional application from that SADC State, whichever is the later.

(7) Notifications regarding the provisional application or ratification shall be sent to the Secretary-General of the Council of the European Union, who shall be the depositary of this Agreement. Certified copies of the notifications shall be lodged with the Executive Secretary of SADC.”

8. Consequently, in order for the Agreement to be provisionally applied between the EU and South Africa as a SADC EPA State, the EU will have to forward a notification of provisional application with respect to South Africa to the Secretary-General, while South Africa will have to forward to the Secretary-General an instrument of ratification or a notification of provisional application. The provisional application will then take effect ten days from the date of the last notification. In practice this means that should South Africa wish for the Agreement to be provisionally applied, it will have to either deposit its instrument of ratification or a notification of provisional application with the Secretary-General.

9. As it can take a considerable time for ratification to be approved by Parliament, the Department of Trade and Industry may wish to have the Agreement provisionally applied by depositing a notification of provisional application. Should they wish to do so, we propose that authority be obtained by means of the President's Minute authorising signature. We can assist in drafting such a President's Minute, should the need arise.

10. We trust that the above will be of assistance.

Andre Stemmet
SENIOR STATE LAW ADVISER (INTERNATIONAL LAW)



17 March 2016