



MEMORANDUM

EXPLANATORY MEMORANDUM TO THE AGREEMENT ESTABLISHING A TRIPARTITE FREE TRADE AREA AMONG THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA, THE EAST AFRICAN COMMUNITY AND THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY

1. BACKGROUND

The Tripartite Free Trade Area (TFTA) was launched in June 2015 in Sharm el Sheik, Egypt by the Heads of State and Government of COMESA, EAC and SADC (**Annex A**). The text based negotiations of the TFTA Agreement were concluded in May 2017 when all Annexes were legally scrubbed by the Tripartite Technical Committee on Legal Affairs. The Annexes will be adopted by the 6th Meeting of Tripartite Sectoral Ministerial Committee (TSMC) on Trade, Customs, Finance, Economic Matters and Home/Internal Affairs meeting scheduled for 7 July 2017 in Kampala, Uganda.

South Africa is the 19th Member State to sign the TFTA agreement in July 2017. So far, twenty two (22) countries have signed the Agreement with Botswana being the latest to sign on 30th January 2018.

With a total membership of twenty seven (27) African countries, the TFTA stands to be an important initiative in accelerating regional integration efforts aimed at ensuring improved intra-Africa trade. It also forms the basis for the on-going Continental Free Trade Area negotiations which will unlock trade and investment opportunities in the entire African continent.

Upon implementation of the Agreement, South Africa will have access to a larger, integrated, and growing regional market which will also enhance the interest of foreign investment. The Agreement thus increases prospects of stimulating industrialisation, employment, income generation and poverty

reduction. Importantly, it also offers the opportunity to improve economies of scale and efficiency, thereby improving the tripartite region's competitiveness both in its own markets and globally.

2. LEGAL IMPLICATIONS

The State Law Adviser from the Department of Justice and Constitutional Development as well as the Department of International Relations and Cooperation were consulted on the compatibility of the TFTA agreement with domestic law and South Africa's international obligations.

The Department of Justice and Constitutional Development is of the opinion that the TFTA Agreement is not in conflict with the domestic law of the Republic of South Africa (**Annex B**).

The legal opinion from the Department of International Relations and Cooperation confirmed that the TFTA Agreement is acceptable from an international law perspective (**Annex C**).

3. NATIONAL EXECUTIVE APPROVAL – SECTION 231(2) OF CONSTITUTION

This Agreement falls within the ambit of Section 231 (2) of the Constitution of South Africa, and thus will require parliamentary approval and ratification prior to implementation.

4. FINANCIAL IMPLICATIONS

There are no financial implications linked to the Agreement.

5. IMPLEMENTATION

The Department of Trade and Industry in close collaboration with other relevant stakeholders; namely Department of Agriculture and Fisheries (DAFF) and South African Revenue Services (SARS) will oversee implementation of the TFTA Agreement.



**AGREEMENT ESTABLISHING A
TRIPARTITE FREE TRADE AREA AMONG
THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA,
THE EAST AFRICAN COMMUNITY AND THE SOUTHERN AFRICAN
DEVELOPMENT COMMUNITY**

**BRIAN M.J. CHIGAWA
ATTORNEY AT LAW**
01 FEB 2018
**EX-OFFICIO
COMMISSIONER FOR OATHS**

CERTIFIED TRUE COPY OF THE ORIGINAL
Brian M.J. Chigawa
01 FEB 2018
**BRIAN M.J. CHIGAWA
ATTORNEY AT LAW**

Preamble

WE, the Member States of the Common Market for Eastern and Southern Africa, the Partner States of the East African Community, and the Member States of the Southern African Development Community, hereinafter referred to as "Tripartite Member/Partner States":

RECALLING AND AFFIRMING the strong and indissoluble bonds of history, freedom, liberation struggles, friendship, solidarity, commerce, trade, shared natural resources, and culture among the people and Governments of the Member/Partner States of the Common Market for Eastern and Southern Africa, the East African Community, and the Southern African Development Community;

RECOGNISING the Kampala Communiqué of the Tripartite Summit of 22 October 2008 under which the Heads of State and Government representing the three regional economic communities agreed, *inter alia*, to establish a single Customs Union beginning with a Free Trade Area;

FURTHER RECOGNISING the Declaration Launching the Negotiations for the Establishment of the Tripartite Free Trade Area of Johannesburg, South Africa, 12 June 2011;

RECALLING the Tripartite Memorandum of Understanding signed on 19 January, 2011 and its provisions on the establishment of the Tripartite Free Trade Area;

COMMITTED to championing and expediting the continental integration process under the Treaty establishing the African Economic Community and the Constitutive Act of the African Union through regional initiatives;

COGNISANT of the provisions establishing free trade areas in the Common Market of Eastern and Southern Africa Treaty, Treaty for the Establishment of the East African Community and the Southern African Development Community Protocol on Trade;

DETERMINED to build upon the success and best practices achieved in trade liberalisation within the three Regional Economic Communities;

COMMITTED to resolving the challenges of overlapping memberships of the Tripartite Member/Partner States to the three Regional Economic Communities;

CONSIDERING that trade in goods and services, infrastructure, cross-border investment, industrial development and movement of business persons should be major areas of co-operation;

DETERMINED to take the necessary measures for reducing the cost of doing business and creating a conducive environment for private sector development;

MINDFUL of the important role of micro, small and medium enterprises in job creation and income generation for the majority of the people in the Tripartite Member/Partner States;

RECOGNISING the significant contribution of trade in goods and services to national incomes of the Member/Partner States;

DETERMINED to progressively liberalise trade in goods and services, promote industrial development, facilitate movement of business persons, support the strengthening of infrastructure, promote competitiveness, build the capacity of micro, small and medium scale enterprises, and contribute to the deepening of integration in the Tripartite Member/Partner States;

RECOGNISING that the development of trade and investment is essential to the economic integration of the Region and will create new opportunities for a dynamic business sector;

CONVINCED that a framework of trade co-operation among Tripartite Member/Partner States based on equality, fair competition and mutual benefit will contribute to the creation of a viable development community;

MINDFUL of the different levels of economic development and geographic specificities of the Tripartite Member/Partner States and the need to share equitably the benefits of regional economic integration;

COMMITTED to improving the competitiveness of Tripartite Member/Partner States at enterprise, industrial and regional levels so as to fully derive benefits from regional and global trade opportunities;

RECOGNISING the progress achieved in the elimination of import duties and other trade barriers within the three regional economic communities;

RECOGNISING the initiatives undertaken by the regional economic communities in establishing themselves as single investment areas and building on this progress; and

RECOGNISING our international obligations under the existing agreements;

HEREBY AGREE as follows;

PART I

INTERPRETATION, ESTABLISHMENT, OBJECTIVES AND PRINCIPLES

Article 1 Interpretation

In this Agreement, unless the context otherwise requires:

"Agreement" means this agreement establishing the Tripartite Free Trade Area;

"COMESA" means the Common Market for Eastern and Southern Africa as established by the Treaty Establishing the Common Market for Eastern and Southern Africa which entered into force on 8th December, 1994;

"Customs duties" means duties laid down in the customs tariff to which goods are liable on entering or leaving the customs territory of the Member/Partner State;

"EAC" means the East African Community established by the Treaty for the Establishment of the East African Community which entered into force on 7th July, 2000;

"Import duties" means customs duties or charges of equivalent effect imposed on, or in connection with, the importation of goods consigned from any Tripartite Member/Partner State to a consignee in another Tripartite Member/Partner State, but do not include any;

- a) charges equivalent to internal taxes imposed consistently with Article III(2) of the GATT 1994 and its interpretative notes in respect of like directly competitive or substitutable goods of the party or the signatory party or in respect of goods from which imported goods have been manufactured or produced in whole or in part;
- b) antidumping or countervailing duties imposed in accordance with Articles VI, and XVI of GATT 1994 and the WTO Agreement on Subsidies and countervailing measures and Article 17 of this Agreement;
- c) safeguard duties or levies imposed in accordance with Articles XIX of GATT 1994, the WTO Agreement on Safeguards and Articles 18 and 19 of this Agreement other fees or charges imposed consistently with Article VIII of GATT 1994.

"Most Favoured Nation treatment" (MFN) means that advantages that any Tripartite Member/Partner State offers to third countries would be offered to other Tripartite Member/Partner States. The purpose is to ensure that Tripartite

Member/Partner State trade amongst each other on terms as good as or better than that offered to non-FTA partners. These advantages would be extended on reciprocity.

"Non-Tariff Barriers" (NTB) means any laws, regulations, administrative and technical requirements other than tariffs imposed by a partner state whose effect is to impede trade;

"Quantitative restrictions" means prohibitions or restrictions on imports into, or exports from a Tripartite Member/Partner State whether made effective through quotas, import licences, or other measures and requirements restricting imports or exports;

"REC" means Regional Economic Community;

"Region" means the geographical territories of the Tripartite Member/Partner States collectively;

"SADC" means the Southern African Development Community as established by the Treaty of the Southern African Development Community which entered into force on 30th September, 1993;

"Special Economic Zones" means a designated economic area in a Tripartite Member/Partner State with regulations that may be different from other areas in the same Tripartite Member/Partner State for the purpose of attracting foreign and domestic investments, know-how and technology;

"SPS" means Sanitary and Phyto-Sanitary Measures;

"TBT" means Technical Barriers to Trade;

"Transit" refers to Customs transit which means a Customs procedure under which goods are transported under Customs control from one Customs office to another; (Annex A and Specifically Annex E to the Istanbul Convention);

"Tripartite Member/Partner States" means the Member States of Common Market for Eastern and Southern Africa, the Partner States of the East African Community, and the Member States of the Southern African Development Community who are party to this Agreement and any other member of the African Union that would have become party to this Agreement;

"Third country" means a country that is not a party to this Agreement;

"variable geometry" means the principle of flexibility which allows for progression in cooperation amongst members in a larger integration scheme in a variety of areas and at different speeds;

“WTO” means the World Trade Organisation.

Article 2
Establishment of the Tripartite Free Trade Area

A Free Trade Area among the Member/Partner States of COMESA, EAC and SADC is hereby established.

Article 3
Scope and Coverage

This Agreement shall, without derogating from the purpose already outlined herein comprise of:

- a) Trade in goods;
- b) Trade in services; and
- c) Other trade-related matters.

Article 4
General Objectives

The general objectives of the Tripartite Free Trade Area shall be to:

- a) promote economic and social development of the Region;
- b) create a large single market with free movement of goods and services to promote intra-regional trade;
- c) enhance the regional and continental integration processes; and
- d) build a strong Tripartite Free Trade Area for the benefit of the people of the Region.

Article 5
Specific Objectives

For purposes of fulfilling and realising the objectives set out in Article 4 of this Agreement, Tripartite Member/Partner States shall:

- a) progressively eliminate tariffs and Non-Tariff Barriers to trade in goods;
- b) liberalise trade in services;
- c) cooperate on customs matters and implementation of trade facilitation measures;
- d) establish and promote cooperation in all trade-related areas among Tripartite Member/Partner States; and
- e) establish and maintain an institutional framework for implementation and administration of the Tripartite Free Trade Area.

Article 6 Principles

The principles governing this Agreement shall be the following:

- a) REC and/ or Tripartite Member/Partner States driven;
- b) variable geometry;
- c) flexibility and special and differential treatment;
- d) transparency;
- e) building on the *acquis*;
- f) single undertaking with regard to the various phases of the Agreement;
- g) MFN treatment
- h) national treatment;
- i) reciprocity;
- j) substantial liberalisation;
- k) consensus decision making; and
- l) best practices in the regional economic communities, the Tripartite Member/Partner States and international conventions binding Tripartite Member/Partner States.

PART II

NON-DISCRIMINATION

Article 7

Most-Favoured-Nation Treatment

1. Tripartite Member/Partner States shall accord to one another the Most-Favoured-Nation Treatment.
2. Nothing in this Agreement shall prevent a Tripartite Member/Partner State from maintaining or entering into new preferential trade agreements with third countries provided that any advantage, concession, privilege or favour granted to a third country under such agreements are offered to the other Tripartite Member/Partner States on a reciprocal basis.
3. Nothing in this Agreement shall prevent two or more Tripartite Member/Partner States from entering into new preferential agreements which aim at achieving the objectives of this Agreement among themselves, provided that any preferential treatment accorded under such agreements is extended to the other Tripartite Member/Partner States on a reciprocal and non-discriminatory basis.
4. Any agreement entered into under paragraph 2 and 3 shall be notified to the Tripartite Sectoral Ministerial Committee responsible for Trade, Finance, Customs, Economic Matters and Home/Internal Affairs.

Article 8
National Treatment

A Tripartite Member/Partner State shall accord to products imported from other Tripartite Member/Partner States treatment no less favourable than that accorded to like domestic products, after the imported products have passed customs, and that this treatment covers all measures affecting the sale and conditions for sale of such products in accordance with Article III of GATT 1994.

PART III

LIBERALISATION OF TRADE IN GOODS

Article 9
Elimination of Import Duties

1. Tripartite Member/Partner States shall not impose new import duties or charges of equivalent effect except as provided for under this Agreement.
2. The provisions of paragraph 1 shall not apply to goods that are not subject to liberalisation.
3. The Tripartite Member/Partner States shall progressively eliminate import duties in accordance with schedules contained in **Annex I** on Elimination of Import Duties.

Article 10
Non-Tariff-Barriers

1. Tripartite Member/Partner States shall eliminate all existing Non-Tariff-Barriers to trade with each other and shall not impose any new ones in line with **Annex III** on Non-Tariff Barriers.
2. Tripartite Member/Partner States recognise the existing reporting, monitoring and elimination mechanisms on Non-Tariff-Barriers established by the three RECs and undertake to harmonise them into a single mechanism as provided for in **Annex III**.

Article 11
Elimination of Quantitative Restrictions

Tripartite Member/Partner States shall not impose quantitative restrictions on imports or exports in trade with other Tripartite Member/Partner States except as otherwise provided for in Article XI.2 of GATT 1994, the WTO Agreement on Safeguards and Articles 17 and 18 and **Annex II** on Trade Remedies of this Agreement.

Article 12
Rules of Origin

Goods shall be eligible for preferential treatment under this Agreement if they are originating goods in any of the Tripartite Member/Partner States in accordance with the criteria and conditions set out in **Annex IV** on Rules of Origin.

PART IV
CUSTOMS COOPERATION AND TRADE FACILITATION

Article 13
Customs Cooperation

Tripartite Member/Partner States shall take appropriate measures including arrangements regarding customs cooperation and mutual administrative assistance to ensure that the provisions of this Agreement are effectively applied in accordance with **Annex V** on Customs Cooperation and Mutual Administrative Assistance.

Article 14
Trade Facilitation

1. Tripartite Member/Partner States agree to design and standardise their trade and customs documentation and information in accordance with internationally accepted standards, taking into account the use of electronic data processing systems.
2. Tripartite Member/Partner States shall ensure an efficient and effective application of this Article in accordance with **Annex VI** on Trade Facilitation.
3. Tripartite Member/Partner States undertake to initiate trade facilitation programmes in accordance with **Annex VI** on Trade Facilitation aimed at:
 - a) reducing the cost of processing documents and volume of paper work required in respect of trade among Tripartite Member/Partner States;
 - b) ensuring that the nature and volume of information required in respect of trade within the Tripartite Free Trade Area does not adversely affect the economic development of, or trade among, the Tripartite Member/Partner States;
 - c) adopting common standards of trade procedures within the Tripartite Free Trade Area where international requirements do not suit the conditions prevailing among Tripartite Member/Partner States;
 - d) ensuring adequate coordination between trade and transport facilitation within the Tripartite Free Trade Area;

- e) keeping under review procedures adopted in international trade and transport with a view to simplifying and adopting them;
- f) collecting and disseminating information on international development regarding trade facilitation;
- g) promoting the development and adoption of common solutions to problems in trade facilitation instruments;
- h) initiating and promoting the establishment of joint programmes, for the training of personnel engaged in trade facilitation; and
- i) establishing and promoting one-stop border posts.

Article 15
Transit

Tripartite Member/Partner States agree to facilitate the movement of goods and means of transport in transit to other Tripartite Member/Partner States in accordance with **Annex VII** on Transit Trade and Transit Facilitation.

PART V

TRADE REMEDIES

Article 16
Transitional Arrangements

1. Where there is evidence of dumping, subsidisation or surge in imports into the territory of a Tripartite Member/Partner State, nothing in this Agreement shall prevent that Tripartite Member/Partner State from applying, in the interim, an anti-dumping, countervailing or safeguard measure governed by:
 - a) REC provisions among the Member/Partner State of the same REC;
 - b) The relevant WTO provisions across the RECs.
2. The Tripartite guidelines on the implementation of trade remedies shall be drafted by a Tripartite Committee of Experts as part of the built in agenda and shall form an integral part of **Annex II** on Trade Remedies.
3. Articles 17, 18 and 19 shall be suspended until **Annex II** on Trade Remedies is finalised and operational.

Article 17
Anti-dumping and Countervailing Measures

1. Subject to the provisions of this Agreement, nothing in this Agreement shall prevent Tripartite Member/Partner States from adopting anti-dumping and countervailing measures in accordance with the relevant WTO Agreements and Annex II on Trade Remedies.
2. In applying this Article, Tripartite Member/Partner States shall be guided by provisions of the WTO Agreement on the Interpretation of Article VI of the GATT 1994, and the WTO Agreement on Subsidies and Countervailing Measures.

Article 18
Safeguard Measures

1. A Tripartite Member/Partner State may apply a safeguard measure to a product only after determining that such product is being imported into its territory:
 - a) in such increased quantities, absolute or relative to domestic production; and
 - b) under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.
2. In applying this Article, Tripartite Member/Partner States shall be guided by the provisions of Article XIX of GATT 1994 WTO Agreement on Safeguard Measures and Annex II on Trade Remedies.

Article 19
Preferential Safeguards

1. Preferential safeguard measures may be applied by a Tripartite Member/Partner States under the provisions in Annex II on Trade Remedies, if as a result of the obligations undertaken by that Tripartite Member/Partner State goods are imported into the territory of a Tripartite Member/Partner State under such conditions as to cause or threaten to cause serious injury to the domestic industry.
2. Preferential safeguard measures shall be applied only to the extent necessary to prevent or remedy serious injury.

Article 20
Cooperation on Trade Remedies

Recognising that dumping, subsidisation and import surges, whether originating from the Region or a Third Country, can adversely affect more than one Tripartite Member

/Partner State within the Region, Tripartite Member/Partner States shall co-operate in the detection and investigation of dumping or subsidisation or sudden imports urges and in the imposition of the appropriate measures to curb such practices.

PART VI

TRADE-RELATED AREAS

Article 21 Technical Barriers to Trade

1. Tripartite Member/Partner States reaffirm their rights and obligations in respect of the WTO Agreement on Technical Barriers to Trade.
2. Tripartite Member/Partner States undertake to facilitate trade through cooperation in the areas of technical regulations, standards, metrology, conformity assessment and accreditation.
3. Tripartite Member/Partner States shall, cooperate to eliminate unnecessary and unjustifiable Technical Barriers to Trade.
4. Cooperation shall include but not be limited to:
 - a) the reinforcement of good regulatory and standards setting practices;
 - b) the implementation of various mechanisms to facilitate the acceptance of conformity assessment results;
 - c) promoting the use of relevant international standards as a basis for technical regulations;
 - d) identifying and assessing instruments for trade facilitation such as the harmonisation, and or equivalence of technical regulations; and
 - e) mutual recognition of conformity assessment results.
5. Tripartite Member/Partner States shall strengthen cooperation and agree on priority areas of mutual interest in matters relating to Technical Barriers to Trade.
6. Tripartite Member/Partner States shall establish and implement a capacity building programme to support the implementation of **Annex VIII** on Technical Barriers to Trade.
7. Tripartite Member/Partner States shall establish mechanisms and structures to enhance transparency in the development and implementation of standards, technical regulations, and conformity assessment requirements.
8. The implementation of this Article shall be in accordance with the provisions of **Annex VIII** on Technical Barriers to Trade.

Article 22
Sanitary and Phytosanitary Measures

1. Tripartite Member/Partner States reaffirm their rights and obligations in respect of the WTO Agreement on the application of Sanitary and Phytosanitary measures.
2. Tripartite Member/Partner States shall undertake to facilitate safe trade in animals and animal products, plants and plant products whilst safeguarding human, animal and plant life or health.
3. Tripartite Member/Partner States shall cooperate to eliminate unjustifiable SPS measures in order to facilitate safe trade in sectors of mutual economic interest.
4. Tripartite Member/Partner States shall establish and implement a capacity building programme to support the implementation of **Annex IX** on Sanitary and Phytosanitary Measures.
5. The implementation of this Article shall be in accordance with **Annex IX** Sanitary and Phytosanitary Measures.

Article 23
Special Economic Zones

1. Tripartite Member/Partner States may support the establishment and operation of special economic zones for the purpose of accelerating development.
2. Products benefiting from special economic zones shall be subject to any regulations that may be made by the Tripartite Council of Ministers. Regulations under this paragraph shall be subject to paragraph 3 of this Article and in support of the Tripartite Industrialisation programmes.
3. The trade of products manufactured in special economic zones within the Tripartite Member/Partner States shall be subject to the provisions of **Annex IV** on Rules of Origin.

Article 24
Infant industries

1. For purposes of this Article, an infant industry shall be understood to refer to a new industry of national strategic importance that has not been in existence for more than five years, and that is experiencing high start-up costs and difficulties competing with like imports.
2. For the purposes of protecting an infant industry, a Tripartite Member/Partner State may, provided that it has taken all reasonable steps to overcome the difficulties related to such infant industry, adopt appropriate measures on similar

goods originating from other Tripartite Member/Partner States, provided that the measures are applied on a non-discriminatory basis.

3. The Tripartite Council of Ministers shall determine the period and the nature of the measures that may be adopted under this Article.
4. The Tripartite Committee of Experts, established under Article 29 of this Agreement, shall keep under constant review the operation of any restrictions imposed under this Article and regularly report to the Tripartite Council of Ministers with recommendations.

Article 25 Balance of Payments

A Tripartite Member/Partner State facing severe balance of payments and external financial difficulties, and that has taken all reasonable steps to overcome the difficulties, may adopt appropriate measures in accordance with guidelines to be determined by the Tripartite Council of Ministers, provided that such measures shall be reviewed annually.

PART VII OTHER AREAS OF COOPERATION

Article 26 Cooperation in Financial Areas

For the purposes of this Agreement, Tripartite Member/Partner States may cooperate and strengthen coordination in financial and payment systems, development of capital markets and commodity exchanges.

Article 27 Cooperation in Trade Policies and Negotiations

Tripartite Member/Partner States may:

- a) cooperate with respect to their trade policies;
- b) enhance their cooperation with bilateral and multilateral partners; and
- c) enhance cooperation in international and multilateral negotiations.

Article 28 Cooperation in Research and Statistics

1. Tripartite Member/Partner States may cooperate in areas of research and statistics necessary for monitoring the performance and operation of the Tripartite Free Trade Area.
2. For purposes of this Article, cooperation shall include the following:

- a) policy research and trade development;
- b) establishment of a Tripartite statistical database;
- c) joint capacity building including joint training;
- d) harmonisation of statistical systems and data management; and
- e) exchange of information.

PART VIII

IMPLEMENTATION OF THE TRIPARTITE FREE TRADE AREA

Article 29

Organs for the Implementation of the Tripartite Free Trade Area

1. The organs for the implementation of the Free Trade Area shall be:
 - a) the Tripartite Summit consisting of the Heads of State and/or Governments of Tripartite Member/Partner States which shall give general direction and impetus for the Tripartite arrangement;
 - b) the Tripartite Council of Ministers consisting of ministers as designated by Tripartite Member/Partner States for the purposes of the Tripartite Free Trade Area;
 - c) the Tripartite Sectoral Ministerial Committee on Trade, Finance, Customs and Economic Matters and Home/Internal Affairs; and the Tripartite Sectoral Ministerial Committee on Legal Affairs each of which shall be responsible for policy direction and implementation in their respective sectors ;
 - d) the Tripartite Task Force of the Secretariats of the three RECs which shall coordinate the implementation of the Tripartite work programme and shall provide secretariat services to the Tripartite arrangement;
 - e) the Tripartite Committee of Senior Officials which shall be responsible for overseeing and guiding technical work; and
 - f) the Tripartite Committee of Experts which shall carry out the technical work and report to the Tripartite Committee of Senior Officials.
2. The Tripartite Summit shall adopt its own rules of procedure.

3. The Tripartite Council of Ministers shall adopt its own rules of procedure.
4. Each Committee shall develop its rules of procedure which shall be approved by the Tripartite Council of Ministers.

PART IX

DISPUTE SETTLEMENT

Article 30 Dispute Settlement

1. A Dispute Settlement Body is hereby established to administer the rules and procedure, as well as the dispute settlement provisions under this Agreement.
2. The Dispute Settlement Body shall have the power to:
 - a) establish panels and an Appellate Body;
 - b) adopt Panel and Appellate Body reports;
 - c) maintain surveillance of implementation of rulings and recommendations of panels and Appellate Body; and
 - d) authorise suspension of concessions under the Agreement.
3. The Dispute Settlement Body shall inform the Tripartite Council of Ministers and relevant Committees of any development in disputes related to provisions of this Agreement.
4. Any dispute arising from the interpretation or application of this Agreement shall be resolved in accordance with the provisions of this Article and Annex X on Dispute Settlement Mechanism.
5. The settlement of any dispute between or among Tripartite Member/Partner States shall, whenever possible, imply removal of a measure not conforming with the provisions of this Agreement or causing nullification or impairment of a benefit under such provision.
6. No Tripartite Member/Partner State shall refer a dispute to the Dispute Settlement Body unless it has in good faith engaged in consultations and negotiations, with a view to resolve the dispute.
7. In the event of inconsistency or a conflict between this Agreement and the treaties and instruments of COMESA, EAC and SADC, this Agreement shall prevail to the extent of the inconsistency or conflict.

PART X

GENERAL AND SECURITY EXCEPTIONS

Article 31 General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed as preventing the adoption or enforcement of measures by any Tripartite Member/Partner State;

- a) necessary to protect public morals or to maintain public order;
- b) necessary to protect human, animal or plant life or health;
- c) relating to the importation or exportation of precious and semi-precious stones, precious and strategic minerals and metals including but not limited to gold, silver, platinum, diamonds, coltan, oil, gas, tanzanite and uranium;
- d) relating to the products of prison labour;
- e) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement, including those relating to customs enforcement, the protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
- f) imposed for the protection of national treasures of artistic, historic or archaeological value;
- g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;
- h) undertaken in pursuance of obligations under any intergovernmental commodity agreement approved by the Tripartite Council of Ministers;
- i) involving restrictions on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry during periods when the domestic price of such materials is held below the world price as part of a governmental stabilisation plan: provided that such restrictions shall not operate to increase the exports of or the protection afforded to such domestic industry, and shall not depart from the provisions of this Agreement relating to non-discrimination; and

- j) essential to the acquisition or distribution of foodstuffs or any other products in general or local short supply, provided that any such measures shall be consistent with the principle that all Tripartite Member/Partner States are entitled to an equitable share of the international supply of such products, and that any such measures, which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist.

Article 32 Security Exceptions

Nothing in this Agreement shall be construed to:

- a) require any Tripartite Member/Partner State to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- b) prevent any Tripartite Member/Partner State from taking any action which it considers necessary for the protection of its essential security interests:
- (i) relating to fissionable materials or the materials from which they are derived;
 - (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; and
 - (iii) taken in time of war or other emergency in international relations; or
- c) prevent any Tripartite Member/Partner State from taking any action in pursuance of its obligations under the Charter of the United Nations.

Article 33 Notification of Prohibited and Restricted Goods

A Tripartite Member/Partner State taking measures pursuant to Articles 31 and 32 shall within twenty-one (21) days from the date the Tripartite Member/Partner State implements the measure notify such measures to the Tripartite Sectoral Ministerial Committee on Trade, Finance, Customs and Economic Matters and Home/Internal Affairs.

PART XI

FINANCIAL PROVISIONS

Article 34 Funding

Tripartite Member/Partner States shall institute appropriate modalities to fund their commitments in the implementation of this Agreement.

PART XII

GENERAL AND FINAL PROVISIONS

Article 35 Working Languages

The working languages under this Agreement shall be Arabic, English, French and Portuguese.

Article 36 Protocols and Annexes

1. Tripartite Member/Partner States shall from time to time conclude such Protocols and Annexes as are necessary for the implementation of this Agreement. Such Protocols and Annexes shall be adopted by the Tripartite Council of Ministers.
2. The Protocols and Annexes shall form an integral part of this Agreement.

Article 37 Amendment

1. This Agreement may be amended at any time by consensus.
2. Any Tripartite Member/Partner State may submit proposals for amendment of this Agreement to the Chairperson of the Tripartite Task Force in writing. The Chairperson of the Tripartite Task Force shall, within 30 days, submit the proposals to Tripartite Member/Partner States.
3. A Tripartite Member/Partner State that wishes to comment on the proposals may do so within 90 days from the date of the dispatch of the proposal.
4. After the expiration of the period, the Chairperson of the Tripartite Task Force shall submit proposals and any comments to the Tripartite Council of Ministers for consideration and adoption.

5. Any amendment shall enter into force upon adoption by the Tripartite Summit by consensus.

Article 38 Sanctions

A Tripartite Member/Partner State which defaults in meeting its obligations under this Agreement shall be subject to such sanctions as the Tripartite Summit may, determine on the recommendation of the Tripartite Council of Ministers.

Article 39 Signature, Ratification and Entry into Force

1. This Agreement shall be signed by the Tripartite Member/Partner States.
2. This Agreement shall be ratified by Tripartite Member/Partner States in accordance with their national laws.
3. This Agreement shall enter into force on the Thirtieth day after the deposit of the fourteenth instrument of ratification by Member/Partner States of COMESA, EAC and SADC.

Article 40 Obligation not to Defeat the Object and Purpose of this Agreement Prior to its Entry into Force

A Tripartite Member/Partner State shall refrain from acts which would defeat the object and purpose of this Agreement when it has:

- a) signed the Agreement or has exchanged instruments constituting the Agreement subject to ratification until it shall have made its intention clear not to become a party to the Agreement; or
- b) expressed its consent to be bound by the Agreement, pending the entry into force of the Agreement, provided that such entry into force is not unduly delayed.

Article 41 Accession

1. This Agreement shall remain open for accession by any Member/Partner State of COMESA, EAC or SADC.
2. The Agreement shall also remain open for accession to other member states of the African Union.
3. The Tripartite Council of Ministers shall adopt accession regulations.

Article 42
Withdrawal

A Tripartite Member/Partner State wishing to withdraw from this Agreement, shall notify the Tripartite Council of Ministers giving twelve (12) months' notice, of its intention to do so. Such a Tripartite Member/Partner State shall discharge its existing obligations before withdrawing from this Agreement.

Article 43
Depositary and Registration

1. This Agreement and all instruments of ratification, accession and notification of entry into force or withdrawal thereof shall be deposited with the Tripartite Task Force.
2. The Tripartite Task Force shall transmit certified copies of the Agreement to the Tripartite Member/Partner States.
3. The Tripartite Task Force shall notify the Tripartite Member/Partner States of the dates of deposit of instruments of ratification and accession.
4. The Tripartite Task Force shall notify this Agreement to the United Nations Secretary General and the WTO.

Article 44
Negotiations on Outstanding Issues on Phase I

Tripartite Member/Partner States undertake to conclude negotiations on outstanding issues under Phase I as set out in **Annex I** on Elimination of Customs Duties, **Annex II** on Trade Remedies and **Annex IV** on Rules of Origin after the launch of the Tripartite Free Trade Area.

Article 45
Phase II Negotiations

1. Recognising the need to conclude Phase II Negotiations, and to provide flexibility in the implementation of the Agreement, the Tripartite Member/Partner States agree to negotiate and endeavour to conclude the following protocols within 24 months upon entry into force of this Agreement:
 - a) A protocol on trade in services; and
 - b) Protocols on trade-related matters, including Competition policy, Cross-Border Investment, Trade and Development, and Intellectual Property Rights.
2. The Tripartite Member/Partner States may conclude protocols in any other trade-related matter agreed to by the Tripartite Member/Partner States.

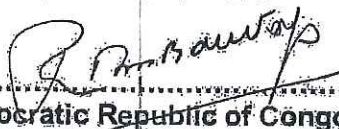
IN WITNESS WHEREOF, WE the Heads of State and Government or duly Authorised Representatives of Tripartite Member/Partner States have signed and sealed this Agreement in four original texts in English, French, Arabic and Portuguese languages, all texts being equally authentic.

DONE at Sharm El Sheikh, in the Arab Republic of Egypt, on this 10th day of June in the year Two Thousand and Fifteen.

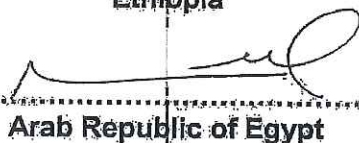
.....
Republic of Angola



.....
Republic of Burundi


Democratic Republic of Congo

.....
Federal Democratic Republic of Ethiopia


Arab Republic of Egypt


.....
Kingdom of Lesotho

.....
Republic of Botswana

.....
Union of the Comoros

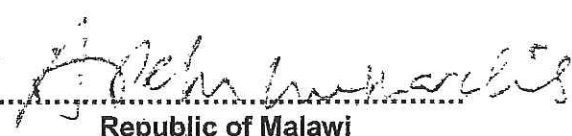

Republic of Djibouti

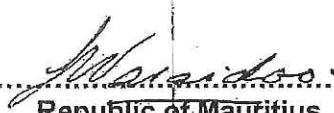
.....
State of Eritrea


Republic of Kenya

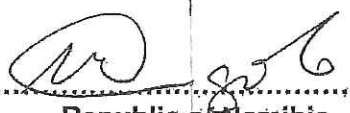
.....
State of Libya


.....
Republic of Madagascar

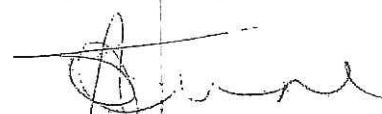

.....
Republic of Malawi

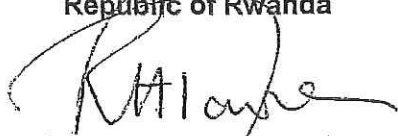

.....
Republic of Mauritius

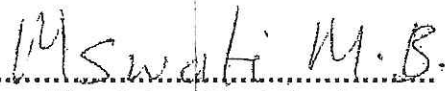
.....
Republic of Mozambique



.....
Republic of Namibia

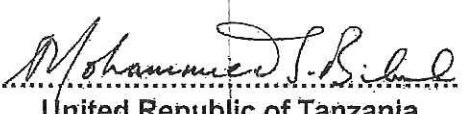

.....
Republic of Rwanda

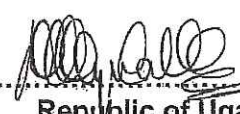

.....
Republic of Seychelles

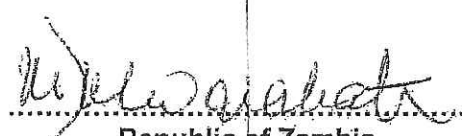

.....
Republic of South Africa

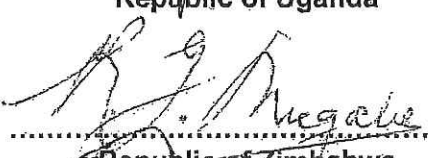

.....
Kingdom of Swaziland


.....
Republic of Sudan


.....
United Republic of Tanzania


.....
Republic of Uganda


.....
Republic of Zambia


.....
Republic of Zimbabwe



the doj & cd

Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

ANNEX B

J 464

OFFICE OF THE CHIEF STATE LAW ADVISER
Private Bag X81, PRETORIA, 0001, Tel (012) 315 1130, Fax (012) 315 1743, Momentum Centre East Tower 12th Floor,
Pretorius Street Office Email: OCSLA@justice.gov.za

Ref: 98/2017/18
Enq: Adv B Venter
Tel: (012) 315 1338
E-mail: bventer@justice.gov.za
Website: <http://www.doj.gov.za>

Date: 19 June 2017

Mr Lionel October
The Director-General
Department of Trade and Industry
Private Bag X84
Pretoria
0001

Dear Mr Lionel October

For attention: Noncedo Mviko

**AGREEMENT ESTABLISHING A TRIPARTITE FREE TRADE AREA AMONG
THE COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA, EAST
AFRICAN COMMUNITY AND SOUTHERN AFRICAN DEVELOPMENT
COMMUNITY: YOUR UNNUMBERED EMAIL DATED 07 JUNE 2017**

Background

1. According to the submission received from the Department of Trade and Industry ("the Department"), the Minister intends to sign the Tripartite Free Trade Area Agreement (the "TFTA Agreement") amongst the Common Market of Eastern and Southern Africa (COMESA), the Eastern Africa Community (EAC) and the Southern African Development Community (SADC), during the Joint Tripartite Sectoral Ministerial Committee on Trade, Customs, Finance, Economic Matters and Home/Internal Affairs meeting, planned for July 2017. South Africa is one of ten countries that are yet to sign the TFTA Agreement. The TFTA Agreement was not signed previously because some of the Annexures to the TFTA Agreement were

not concluded.

2. We are now informed that all outstanding legal texts relating to the first phase of the negotiations on trade in goods were finalised in December 2016 and legally scrutinized by the Tripartite Committee on Legal Affairs in May 2017. Trade in goods is the central part of the TFTA Agreement. The second phase of negotiations, which covers trade in services, cross border investment, competition policy, intellectual property rights, as well as trade and development remains part of the built-in agenda and will commence after the completion of Phase I. The commencement and conclusion of Phase II negotiations have no impact on the implementation of Phase I.

Request

3. In view hereof, the Department has, as a matter of the utmost urgency, submitted the TFTA Agreement together with certain of its Annexes to us for scrutiny 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.

Discussion

4. We have already on three occasions scrutinised the Agreement under Opinions No. 438/2014/15 dated 9 December 2014, No. 46/2015/16 dated 11 May 2015 and No. 109/2015/16 dated 02 June 2016 ("previous opinions"). (Our Opinions are attached hereto for ease of reference.)

5. As referred to in the previous opinions, the Department is specifically advised to take the Customs and Excise Act, 1964 (Act No. 91 of 1964) ("the Customs and Excise Act") into consideration with regard to the TFTA Agreement. As discussed in our previous opinions, the national executive may conclude agreements with African territories under section 51 of the Customs and Excise Act, and in terms of section 46(3) thereof, the President may by agreement with the government of any such territory increase or reduce, for the purposes of section 51, the percentage prescribed in section 46(1) of that Act. Since the relevant provisions of the Customs and Excise Act have already been discussed at length in our previous opinions, we

are not going to repeat that discussion in this opinion. With regard to International Instruments, the Department is again specifically referred to the Agreement on the Implementation of Article VII of the General Agreement of Tariffs and Trade, 1994 (GATT).

6. We have also summarized and commented on the text of the TFTA Agreement in our previous Opinion 109/2015/16. Our remarks in this regard in our previous opinions are therefore reiterated. Since the TFTA Agreement (including the Annexes) is a multilateral document, which was already vetted by the Tripartite Committee on Legal Affairs, we have not made any changes to the drafting form and style thereof. We also wish to advise that it is not in our province to comment on the technical matters referred to in the TFTA Agreement.

7. The following Annexes have been referred to us:

- Annex II

Trade Remedies

Under PART V of the Agreement;

- Annex III

Non-Tariff Barriers

Under Article 10(2) of the Agreement;

- Annex IV

Rules of Origin

Under Article 12 of the Agreement;

- Annex V

Customs Co-operation and Mutual Administrative Assistance

Under Article 13 of the Agreement;

- Annex VI

Trade Facilitation

Under Article 14 of the Agreement;

- Annex VII

Transit Trade and Transit Facilitation;

Under Article 17 of the Agreement;

- Annex VIII

Technical Barriers to Trade

Under Article 25 of the Agreement;

- Annex IX

Sanitary and Phytosanitary Measures

Under Article 22 of the Agreement; and

- Annex X

Dispute Settlement Mechanism

Under Article 30 of the Agreement.

8. In respect of the Annexes, we wish to state that issues relating to trade and customs and excise are of a highly technical nature, and do not fall within our province. The Department has brought it to our attention that the South African Revenue Service, which has experts in the field of customs and excise formed part of South Africa's negotiating team.

9. However, we wish to bring it to the attention of the Department that a Bill has been introduced into our Parliament, which is entitled, the "Plant Health (Phytosanitary) Bill B7—2017" (the "Bill"), and, when same becomes law, such may have an effect on Annex IX of the Agreement. The Long Title of the Bill reads as follows:

"To provide for phytosanitary measures to prevent the introduction, establishment and spread of regulated pests in the Republic; to provide for the control of regulated pests; to provide for regulation of the movement of plants, plant products and other regulated articles into, within and out of the Republic; and to provide for matters connected therewith.

Clause 35 of the Bill provides as follows:

"Application of international agreements

35. This Act gives effect to ratified international agreements affecting phytosanitary matters to which South Africa is a Party, and which bind the Republic."

10. At this stage, it is difficult to advise on which provisions of the Bill could be inconsistent with Annex IX of the Agreement. In this regard, we would like to advise that the Department liaise with the Department of Agriculture, Forestry and Fisheries.

Ad entry into force of the TFTA Agreement

11. The Department's attention is drawn to the provisions of section 231 of the Constitution of the Republic of South Africa, 1996 (the "Constitution"), which section provides for international agreements and reads as follows:

"231.(1) The negotiating and signing of all international agreements is the responsibility of the national executive.

(2) An international agreement binds the Republic only after it has been approved by resolution in both the National Assembly and the National Council of Provinces, unless it is an agreement referred to in subsection (3).

(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the national executive, binds the Republic without approval by the National Assembly and the National Council of Provinces, but must be tabled in the Assembly and the Council within a reasonable time.

(4) Any international agreement becomes law in the Republic when it is enacted into law by national legislation; but a self-executing provision of an agreement that has been approved by Parliament is law in the Republic unless it is inconsistent with the Constitution or an Act of Parliament.

(5) The Republic is bound by international agreements which were binding on the Republic when this Constitution took effect."

12. Since Article 39(2) of the TFTA Agreement, in our view, clearly provides for ratification of the TFTA Agreement, and since it is a multilateral instrument, we are of the opinion that 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.

13. We have also considered, inter alia, the following legislation:

- the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- the State Liability Act, 1957 (Act No. 20 of 1957);

and are of the view that the provisions of the draft TFTA Agreement are not in conflict therewith.

14. In respect of other relevant legislation, we wish to draw the attention of the Department to the following aspects:

- The Department is advised to take note of the Customs Duty Act, 2014 (Act No. 30 of 2014). It is to be noted that although the Act was assented to on 9 July 2014, the Act will take effect on a date to be proclaimed.
- The Department is also advised to take note of the Customs Control Act, 2014 (Act No. 31 of 2014). It is to be noted that although the Act was assented to on 21 July 2014, the Act will take effect on a date to be proclaimed.
- The Department is further advised to take note of the International Trade Administration Act, 2002 (Act No. 71 of 2002), and the Special Economic Zones Act, 2014 (Act No. 16 of 2014).
- In respect of the Trade on Services, the attention of the Department is directed to the Immigration Act, 2002 (Act No. 13 of 2002), in terms of which only the Minister of Home Affairs may exempt any person or category of persons from the visa requirement in terms of section 10A(1) of the Act.

Conclusion

15. Subject to our aforementioned remarks, no provision of the proposed TFTA Agreement is, as far as we could ascertain, in conflict with the domestic law of the Republic of South Africa.

Yours sincerely



FOR THE OFFICE OF THE CHIEF STATE LAW ADVISER

B VENTER / JV NURSE / SM MASAPU



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

17steenkampt260601
File: 10/16/3/1
RO202/2017

Mr T Kola
Email: Kolat@dirco.gov.za

AGREEMENT ESTABLISHING THE TRIPARTITE FREE TRADE AREA

1. Your request for legal advice, dated 20 June 2017 refers. We also refer to the email correspondence of Ms D Mpyana of today's date.
2. Please be advised that we have reviewed the Agreement from an international law perspective. We take note of the comments of the State Law Advisors of the Department of Justice and Constitutional Development. Subject to the comments hereunder, the Agreement is acceptable from a legal point of view.

Comments:

3. General:

- 3.1. We take this opportunity to point out that the version that we reviewed, while final, does not appear to be the signature version of the Agreement. This is because:
 - 3.1.1. The Annexes still contain footers indicating the version and date of the various Annexes;
 - 3.1.2. There are some formatting issues on the documents that need to be reviewed and finalised;
 - 3.1.3. The content of article 7(2) of Annex X (Dispute Settlement Mechanism) has not been completed; and
 - 3.1.4. Reference to Annex X in Article 30 of the Agreement is erroneously indicated as "Annex 10" rather than "Annex X".
- 3.2. We remind the line function department that the version that is certified by this Office must be the final, proofread and corrected version of the Agreement. The Agreement includes all Annexes.

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).

3.3. We have not been provided with a copy of Annex I to the Agreement. We understand that the Tariff Schedule is a technical document and as such would not merit legal comment. However, we remind the line function department that the Annexes form an integral part of the Agreement and that all the Annexes must be included in the document that is certified by this Office.

4. Ad Preamble:

We note the reference to the Tripartite Memorandum of Understanding signed on 19 January 2011 in Preambular Paragraph 5. The South African Treaty Section does not have a record of this MOU. While we recognise that this MOU might be of a non-binding nature, we would still request the line function department to provide a copy to the South African Treaty Section in DIRCO.

5. Ad Article 2:

5.1. The current wording of this paragraph might be confusing to those who are not familiar with the structures of COMESA, the EAC and SADC. We would propose that the text be amended as follows:

"A Free Trade Area among the Member States of COMESA, the Partner States of the EAC and the Member States of SADC is hereby established."

Alternatively, the Article could read as follows:

"A Free Trade Area among the Tripartite Member/Partner States is hereby established".

5.2. However, we recognise that at least one State has already signed the Agreement. As such, and since the current wording does not create any legal difficulties, we would not insist on this change if it is problematic to the negotiators to change the text at this point.

6. Ad Article 29:

6.1. We would like to take this opportunity to point out the extensive powers of the Tripartite Council of Ministers, which is established in terms of Article 29(1)(b).

6.2. The authority of the Council of Ministers even extends to issues such as the drafting of regulations (see, for example, Article 23(2)).

6.3. Amendments to the Agreement (in terms of Article 37) would also be approved and adopted on a consensus decision of the Council of Ministers.

6.4. Legally, this is not problematic and it is a policy decision on whether to accept this mechanism or not. We merely point out that once the Agreement has been ratified by South Africa (which includes passing through the Parliamentary approval process), South Africa will not be called upon again at a domestic level to approve / ratify any amendments to the Agreement, as these will automatically enter into force in accordance with the consensus decision of the Council of Ministers.

6.5. We must emphasise that this mechanism is also applied in some other international settings. However, we take this opportunity to point this out, to enable the line function department to take a fully informed decision on the matter.

7. Ad Articles 44 and 45:

7.1. Articles 44 and 45 refers to negotiations on outstanding issues and negotiations that still need to be concluded.

7.2. While it does appear that the negotiations referred to in these two Articles have since been concluded, we do point out that their inclusion in the Agreement introduces a level of

uncertainty regarding the scope of the obligations that might still be included in the Agreement.

- 7.3. We would request the line function department to confirm whether all negotiations in this regard have been concluded.
8. We are of the view that this draft Agreement falls within the ambit of section 231(2) of the Constitution of the Republic of South Africa, 1996, requiring parliamentary approval for ratification.
9. This classification is based thereon that the Agreement is multilateral in nature and is of high importance from a policy point of view. The scope of the Agreement spans across the mandate of a number of departments, including the dti and SARS. Finally, Article 39 of the Agreement itself requires States to ratify the Agreement in accordance with their domestic law.
10. Parliament's approval needs to be obtained **before** the Agreement can be ratified. In order to obtain Parliamentary approval the Agreement needs to be certified by this Office. The documentation required for certification consists of:
- two copies of the President's Minute;
 - two copies of the Explanatory Memorandum setting out the purpose of the Agreement and proposed date of signature;
 - two copies of the finally agreed text of the Agreement;
 - two copies of the legal opinions from the State Law Advisers at the Department of Justice and Constitutional Development and this Office;
 - Completed certification form (attached herewith)
 - all documentation in folder Z137.
11. Once the President has signed the Minute, the Agreement cannot be amended in any way.
12. Following the process to obtain the Presidential Minute, the Protocol must be submitted to Parliament in the following manner :
- 12.1. Approach the relevant cabinet portfolio committee :
- The line function department must prepare a Cabinet Memorandum. The various Cabinet Committees may have their own requirements for the format of Cabinet Memoranda. The usual headings required are: Subject; Purpose; Summary; Discussion; Organisational and Personnel Implications; Financial Implications; Communication Implications; Constitutional Implications; Other Departments/Bodies consulted; Recommendations.
- 12.2. The Agreement must be considered by Parliament (National Assembly and National Council of Provinces) :
- 12.2.1.1. The line function department must prepare an Explanatory Memorandum setting out the history, objectives and implications of the agreement;
- 12.2.1.2. The legal opinions from the State Law Advisors of both Departments (DOJ&CD and DIRCO) must be included;
- 12.2.1.3. It must be stated whether the agreement contains any self-executing provisions in terms of section 231(4) of the Constitution;
- 12.2.1.4. The projected financial and other costs of the agreement must be set out;
- 12.2.1.5. The Explanatory Memorandum must contain all other information needed to take an informed decision.
- 12.3. In cases of treaties requiring an Instrument of Ratification, such Instrument of Ratification must be deposited with the Depository:
- 12.3.1.1. The Line Function Department must prepare the Instrument of Ratification;
- 12.3.1.2. The Minister of International Relations and Cooperation or the President must sign the Instrument of Ratification;

12.3.1.3. DIRCO will send the Instrument of Ratification to the relevant depository through the diplomatic channels.

12.4. The Agreement must be deposited with the Treaty Section at DIRCO :
The documents required are:

- A certified copy of the Agreement;
- The President's Minute or Parliamentary authorisation
- Copy of the signed Instrument of Ratification (where applicable).

13. It is trusted that our comments would be of assistance to you.



TANIA STEENKAMP HEFER
STATE LAW ADVISER (IL)

PRETORIA
26 June 2017