



## CALL FOR APPLICATIONS

### **PEER REVIEWERS FOR A STUDY ON THE PROPOSED KENYA-US FREE TRADE AGREEMENT (FTA)**

#### 1. INTRODUCTION

Kenya and the USA are currently engaged in talks on a proposed Free Trade Agreement that will succeed the African Growth and Opportunity Act (AGOA) when it expires in 2025. These talks are under the auspices of the Kenya-USA Trade and Investment Working Group (TIWG), which was established by President Uhuru Kenyatta and President Donald Trump in August 2018. To prepare for the negotiations, it is important that Kenya identifies her specific areas of interest that should be considered in the negotiations, and subsequently ensure that her interests are well reflected in the outcome of the negotiations. Kenya should therefore develop a comprehensive country positions on the specific areas of interest, which will then guide her approach to the negotiations. In this regard, Kenya should be in the forefront in producing the first draft text, which should form the basis for further negotiations.

Based on foregoing, Econews Africa has commissioned two studies on legal analysis and second one on econometric analysis on the US-Kenya FTA negotiations to inform the engagements in this process. As a result, Econews Africa is seeking applications from experts in the said areas to carry out an expert review of the studies. Review applications are accepted for one or both studies.

#### 2. OBJECTIVES

The primary objective of this assignment is to undertake a review for a study undertaken by consultant on the proposed FTA negotiations between Kenya and the USA. This will also include appraisal of the methodology, examination of reports and recommendation on improvements in order to develop a thorough document that hopefully will assist the Kenya Government in all aspects of the issues under negotiations. The document would also endeavour to respond to all issues tabled by the US.

#### 3. SCOPE OF WORK

The peer reviewer(s) on the basis of terms of reference for the study will work together with the respective consultant in a timely manner to ensure the study covers all the key areas expected to be examined as it relates to the Kenya-US FTA and provide feedback to address any shortfalls in the study.

The scope of work for the reviewers will be mainly guided by Consultant Terms of Reference for each of the study as outlined hereunder:

##### *3.1 Key areas to be covered by Econometric Study*

1. Review the historical cooperation relationship between Kenya and the US highlighting the key areas of cooperation



- a) Review and Analyse Kenya's relationship with the US the African Growth Opportunity Act (AGOA), trade and sectoral economic performance and the opportunities and challenges.
2. Review Kenya's trade performance under the EAC and COMESA.
  - a) Identify the sensitive products for Kenya under EAC and COMESA its implication on the proposed Kenya- USFTA
  - b) Review Kenya's engagement under TFTA and AfCFTA negotiations and its implication on the proposed Kenya- USFTA
3. Examine the political economy implications of trading under EAC, COMESA and negotiations under TFTA, AfCFTA and the Kenya- US TFA.
4. Analyse the USMCA FTA Agreement which the US has proposed as the template for negotiations with Kenya, highlighting benefits and challenges
5. Undertake an analysis (using appropriate models and data) of the implications of the proposed sectors for negotiations on the Kenyan Economy.
  - a) Trade creation and diversion effects Kenya, EAC, COMESA, AfCFTA
  - b) Sectoral multiplier and welfare effects for Kenya
  - c) Socio-economic impact of investments in the key sectors of interest under the Kenya-US FTA.
  - d) Identification of sensitive products to be excluded from the Kenya- US FTA negotiations
6. Provide actionable policy recommendations for negotiations under the Kenya-US FTA:
  - a) By sector and products
  - b) Sensitive sectors/products
  - c) Trade and investment opportunities
7. Examine all issues on the agenda and prepare briefs on each of them ensuring their compatibility with WTO discipline

### *3.2 Key areas to be covered by legal analysis study*

- 1) WTO-Compatibility Review and a WTO-Plus Review
  - a) Review and analyse the compatibility of the proposed Kenya- US FTA with key WTO Agreement [Focus on Trade in Goods; Trade in Services; Sanitary and Phytosanitary Measures; Technical Barriers to Trade; Intellectual Property], using the provisions of the USMCA as the organizing framework.
  - b) Review and analyse the risk and opportunities of WTO-plus obligations using the provisions of the USMCA as the organizing framework.
  - c) Provide short advisory brief on its compatibility with WTO requirements including flexibilities for developing countries.
- 2) WTO-Extra Review [Focus on new frontiers in international trade law and policy that are not subject to WTO discipline]
  - a) Review and analyse the WTO-extra sectors and obligations using the provisions of the USMCA as the organizing framework. [Focus on Digital Trade; Anti-Corruption; and Good Regulatory Practices; Small and Medium-Sized Enterprises].
  - b) Using the provisions of USMCA FTA that the US has proposed as template for negotiations,
    - i.) Assess the substantive remit of the obligations that states assume when committing to these new disciplines and what will be required to implement them.
    - ii.) Identify those provisions of the agreement that present legal challenges and risks for Kenya
    - iii.) Identify provisions that present risks to Kenya's regulatory space
    - iv.) Overall, analyse the legal implications for Kenya of assuming obligations under these new disciplines.



- 3) Investment
  - a) Assess the quality and legal implications of an investment chapter of a proposed Kenya-U.S. FTA, using the provisions of the USMCA.
  - b) Based on evolving best practices of States and pertinent sub-regional (East African Community) and continental framework, propose appropriate model for investor protection.
- 4) U.S. FTA Review with other countries
  - a) Assess recent FTAs that the US has concluded with other developing countries and prepare short legal advisories on best practices contained in such FTAs as well as legal risks that the agreements pose for participating states. [Focus on FTA with Australia (2004); Morocco (2004), Korea (2007) Vietnam should be considered as well]
- 5) Sustainability Review [Environment; Labour; Regulatory Space]
  - a) Assess the quality and legal implications/risks of the environmental chapter of the USMCA
  - b) Assess the quality and legal implications/risks of the labour chapter of the USMCA
  - c) Assess the risks of impermissible intrusion into domestic regulatory policy space. Assess the quality of provisions designed to preserve domestic regulatory space and ensure flexibility for the Government to protect legitimate domestic priorities.
- 6) Dispute Settlement Review
  - a) Assess the quality and legal implications/risks of the State-to-State dispute settlement mechanism, using the provisions of the USMCA as the organizing framework.
  - b) Assess the quality and legal risks of provision on investor-state arbitration, using the provisions of the USMCA as the organizing framework.
  - c) Propose appropriate dispute settlement model for the investment chapter of the Kenya-U.S. FTA.
- 7) Administrative, Institutional, and Regulatory Review
  - a) Assess the administrative and institutional implications, for Kenya, of a USMCA-type deal.
  - b) Identify and assess the implementation mechanisms contemplated under a USMCA-Type agreement.
- 8) Periodic Review and Exit Strategies by assessing opportunities and obstacles to periodic review and termination.
- 9) Best Practices Review/Agenda - Identify, issues/topics that should be on the agenda, based on evolving practice of states and assessment of recent trade FTAs.

#### 4. REVIEWERS TASK

Based on the study terms of reference highlighted in the 3 above, the reviewer will be required to undertake a general review of the draft study report and provide a detailed review feedback. Specifically, the reviewer is expected to:

- a) Ensure overall quality control for the study
- b) Evaluate the strengths and weaknesses of the proposed methodology proposed by the consultant to determine whether it is suitable for meeting the objectives of the proposed study.
- c) Provide specific feedback to the consultant on the inception report
- d) Review and comment on the data requirements necessary for applying the proposed methodology to the study.



- e) Evaluate the application of the proposed methodology in arriving at the conclusions of the study. If there is disagreement with what the consultant has recommended, clearly state that and your reason why.
- f) Evaluate whether the approach outlined is reasonable for the achievement of the objectives set in the study. As part of this TOR, comment on any constraints that may hinder application of the methodology proposed by the consultant.
- g) Undertake fact checking for the study report
- h) Provide any recommendations for further improvement

## 5. EXPECTED DELIVERABLES

Provide written feedback on the methodology proposed by the consultant undertaking the study, provide written comprehensive review feedback on the draft report, fact-check the study report, give any key recommendation towards improving the quality of the study.

## 6. TIMELINE

The assignment will take 15 days distributed intermittently in the process of undertaking the study.

## 7. REQUIRED EXPERIENCE AND QUALIFICATION

The Peer Reviewer(s) must have:

- i. Demonstrable track record of research and/or reviews for studies related to international trade including bilateral, multilateral and regional trade analysis and negotiations or any other related fields
- ii. Experience on trade policy and other trade related matters
- iii. Undertaken a similar exercise in providing technical and analytical support, and recommending actions to professionals
- iv. Minimum of an advanced degree in international trade or equivalent discipline

## 8. SUBMISSION REQUIREMENTS/ GUIDELINES

If you are interested in this task Kindly apply to Econews Africa complete with application letter, brief description on proposed review approach and updated Curriculum Vitae. While applying, please ensure you indicate clearly the study you are applying to review (Econometric or Legal Analysis) if applying for both also indicate so in your application. Please note that Econews Africa reserves the right to consider an applicant to review one study even when the applicant has applied to review both studies. Please note that the applications will be received and reviews on a rolling basis. Due to a huge number of applicants, only shortlisted candidates will be contacted.

Please submit your application in PDF format to [procurement@taxjusticeafrica.net](mailto:procurement@taxjusticeafrica.net) and copy [info@econews-africa.org](mailto:info@econews-africa.org) no later than **16<sup>th</sup> November 2020, 1700 EAT**. Any questions regarding the ToR can be forwarded to the email addresses.