

Competition, Trade and Investment | Insights Series



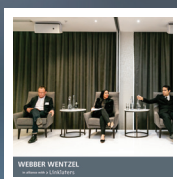
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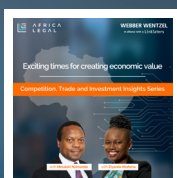
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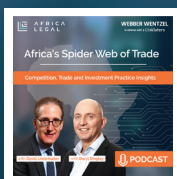
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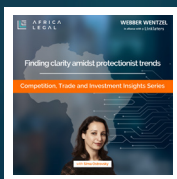
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# Your one-stop shop for CTI



Webber Wentzel recently launched its multi-disciplinary Competition, Trade and Investment (CTI) Practice Group, a one-stop shop that has the expertise to advise on all the complexities of these three areas.

Joined by a stellar line-up of speakers including South Africa's Minister of Trade, Industry and Competition, the South African firm's launch conference focused on emerging trends and competition as well as trade and investment in the wake of regional and continental integration.

Daryl Dingley, Partner and Head of the Competition, Trade and Investment Practice, explained why there's a need for an integrated trade and investment offering in South Africa. "Given all the complexities, conflicts and the importance of trade, competition and investment to firms and policy makers alike, we decided that it was time to offer our clients a holistic service offering that covers all these areas from within a single practice group," he said.

Dingley clarified what exactly trade, investment and competition policy is, how the three strands intersect, where the conflicts are, and how this all impacts the market. These policies are vital drivers of economic growth, and the regulatory framework has changed alongside the so-called "new economy", he said.

A solid team was required to offer credible advice on such complex issues, and the new CTI team consists of experts in competition, trade, public law, corporate mergers and acquisitions, intellectual property, tax and trade finance law. They and their alliance partners, Linklaters, are able to advise on trade and investment matters across Africa, but with a particular focus on foreign direct investment approvals.

"Through this new offering we will be able to enhance the gains by all stakeholders as firms look for trade and investment opportunities and African countries seek to enhance the welfare of their citizens, especially in light of the African Continental Free Trade Agreement," Dingley said.

In his keynote address, the Minister of Trade, Industry and Competition, Ebrahim Patel, commented that the launch of the integrated practice unit follows the natural convergence of the related areas of competition, trade and investment. He reminded the audience of the "significant interface between domestic competition policy and matters connected to international trade".

Patel used the practical example of how numerous shortages of medical goods during the early days of the pandemic in South Africa were overcome through thinking out the box and changing the way things were usually done. This gave the audience a clear understanding of "the level of convergence in thinking we need to use within the public sector and ... the value of an integrated approach in dealing with policy matters within your law firm," he said.

The minister also shared detailed plans his department has for the future and areas they're looking to improve on, like industrialisation, localisation and building a capable state.

Meluleki Nzimande, the former Chief Commissioner of the International Trade Administration Commission of South Africa, will be joining Webber Wentzel in August 2022 as part of the CTI practice. He closed the conference by reiterating that the new development at Webber Wentzel has not taken place in a vacuum. "There is an economic underpinning that makes this service a necessity. We meet in circumstances where the performance of the South African economy is lacklustre and there is a need for a decisive push to get us back to at least pre Covid-19 levels and, better still, to labour observing levels of growth and industrialisation, building a capable state and inclusive growth and transformation," Nzimande concluded.



To learn more about the new CTI practice, watch the launch presentation [here](#) or visit the Webber Wentzel website [here](#).

<https://www.africa-legal.com/news-detail/your-one-stop-shop-for-cti/>

## Time to harness collective muscle



At the launch of Webber Wentzel's new Competition, Trade and Investment (CTI) Practice Group, Yael Shafir moderated a panel of the highest calibre to gauge their thoughts on the African Continental Free Trade Area (AfCFTA), localisation, foreign direct investment (FDI), intra Africa investment and digital trade.

The panel featured Professor Franziska Sucker (Associate Professor, School of Law at the University of Witwatersrand), Stephen Meltzer (Executive Consultant at Webber Wentzel), James Hodge (Chief Economist at the Competition Commission and Acting Deputy Competition Commissioner), and Olivier Serrao (Executive: Strategy at Business Leadership South Africa).

It's common knowledge that **AfCFTA** still faces many challenges before meaningful trade across the continent kicks in. Sucker highlighted some of these including incomplete tariff negotiations, insufficient physical infrastructure, inadequate digital infrastructure, the challenge of working with 42 currencies, a lack of domestic legislation, and a lack of know-how on the ground among customs officers.

With AfCFTA tariff commitments due to be finalised by June, and competition, IP and digital trade aspects due to be finalised by September, she commented: "These are the official deadlines and I don't think it's realistic."

Meltzer discussed some of the trade remedies under AfCFTA, but said, "at the moment these remedies are more illusory than real." Anti-dumping measures, global safeguards and preferential safeguards are included, but he explained that up to now these have only been used by the Southern African Customs Union (SACU) and Egypt because the rest of Africa does not have the capacity to conduct the investigations which are required by the WTO and these agreements.

On the feasibility of implementing a continental

competition policy and possibly a continental competition regulator, Hodge replied: "What we may need to do is have a three-tier approach of national authorities, regional authorities and continental authorities and find ways in which we can divide the jurisdiction between them."

Moving closer to home, and with localisation having been identified as a critical deliverable in South Africa's economic recovery action plan, Serrao pointed out that localisation, controversial as it is, has been around for many years in the form of PPPFA, BBBEE and even voluntary organisations like Proudly South Africa. "I think there is broad consensus on the need for localisation provided that it's smart localisation," he said. "I think we need to be careful about using localisation as a blunt tool."

When it comes to local procurement as part of localisation there's another hiccup. Meltzer shared that in February 2022, the Constitutional Court upheld the Supreme Court of Appeal's verdict that the Preferential Procurement Regulations issued by the Minister of Finance in 2017 were invalid and that the minister did not have the power to prescribe pre-qualification criteria for tenders. Meltzer explained there is currently a draft public procurement bill which will repeal the framework agreement, but in the meantime there's much uncertainty.

Looking at the challenge of attracting foreign direct investment (FDI), Serrao shared some of the pros and cons of South Africa, concluding that "the country is certainly bankable and investable", and although there is concern from potential investors there is also a lot of interest.

In explaining the role regulators such as the Competition Commission play in promoting FDI, Hodge highlighted that there is also an advocacy role for competition agencies. "Stability of society is

conducive to investment,” he emphasised, and “overall investment will grow if we have a more stable economy, more equal economy and one where there are opportunities for the entrants and not just the incumbents.”

Hodge also discussed the importance of AfCFTA as it extends into the digital economy. “What’s important from a continental perspective is bringing that collective muscle that’s going to put us in a better position to negotiate terms, allow enforcement and provide protection of our consumers and businesses.”



To watch the full panel discussion click [here](#).

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# Shaking up the market



Webber Wentzel's new CTI practice has made waves with its unique offering and the well-timed decision to launch it in response to a surge in demand for these services. Africa Legal took a closer look at what they're offering and why it's so necessary right now.

The panel featured Professor Franziska Sucker Webber Wentzel's new CTI practice has made waves with its unique offering and the well-timed decision to launch it in response to a surge in demand for these services. Africa Legal took a closer look at what they're offering and why it's so necessary right now.

The firm has always offered clients competition law, trade and investment (CTI) advice, but in response to changing times and client needs, they decided to merge their expertise into one more formally integrated client offering. Webber Wentzel believes this shift will enable them to better assist clients with all the legal nuances of investing in and into Africa.

The new practice area also aligns with Webber Wentzel's Environmental, Social and Governance (ESG) strategy, their Africa vision and their goal of having a transformative and sustainable impact through their work and actions.

Daryl Dingley, partner and head of the Competition, Trade and Investment Practice, explained why there's a need for an integrated trade and investment offering in South Africa. "Given all the complexities, conflicts and the importance of trade, competition and investment to firms and policy makers alike, we decided that it was time to offer our clients a holistic service offering that covers all these areas from within a single practice group," he said.

Across the world, competition laws are constantly changing and increasingly influencing key aspects of every firm's corporate and commercial strategies. This trend is particularly prevalent in Africa, where the establishment and enforcement of domestic and

regional competition laws have increased significantly over the last few years.

Webber Wentzel already has a large team of competition law experts with both commercial and economic training and experience. This team is well known in the market for assisting clients with complex competition law issues and for being able to provide cost-effective, business-centric solutions.

Clients across all economic sectors in Africa look to them for solutions that manage their compliance requirements and that are suitable to their unique business needs, including cross-border capabilities.

The implementation of the African Continental Free Trade Area (AfCFTA) will encourage more businesses to take a regional view on CTI, and presents an important opportunity to enhance long-term growth in Africa. Webber Wentzel's new CTI practice offers one point of contact to handle transactions over multiple jurisdictions and works closely with their alliance partner Linklaters and other relationship firms across the rest of Africa.

In addition to the current competition, trade, and investment advisory and approvals services they offer, the CTI practice will be able to assist with trade compliance; drafting and negotiating trade agreements; trade due diligence in M&A transactions; Africa market entry and industrialisation strategy; input on import, export and supply chain legal strategy; investment promotion and protection; drafting trade remedy laws; and advising African governments on trade policy.

The CTI practice will also work with various chambers of commerce, regulators and trade contacts at key regional bodies to promote trade and investment in Africa.

Webber Wentzel's core CTI team will draw from the

best by collaborating with a virtual trade and investment team comprising experts from other practice groups such as dispute resolution, tax, funds, M&A, corporate, banking and finance, export finance, public law and intellectual property.

The firm's expertise, ability to innovate, and commitment to go the extra mile to achieve significant outcomes for their clients, ensure they remain at the forefront of ground-breaking developments. To learn more about the new CTI practice, watch the launch presentation [here](#) or visit the Webber Wentzel website [here](#).

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# Nzimande's return boosts CTI Practice



Meluleki Nzimande has re-joined Webber Wentzel as a partner in the Competition, Trade and Investment (CTI) Practice after four years away. His added experience promises great things for the firm's new division.

Nzimande practised at Webber Wentzel for almost 16 years, nine of those as a partner, then in 2018 he left to join the International Trade Administration Commission of South Africa (ITAC) where he became the chief commissioner.

So why return to private practice and Webber Wentzel right now? "My move from Webber Wentzel to ITAC was motivated by my desire to do national service. I gave myself five years. Webber Wentzel has now established the Competition, Trade and Investment Practice Group, and I am excited about this development and want to be part of this new journey," he shared.

Nzimande feels the new CTI practice is a great fit for him personally because the intended output of this practice group dovetails with his expertise and his passion about contributing to the economic development of South Africa, the Southern African region, and Africa as a whole.

Asked about the difference between working in the public and private sectors, Nzimande said the private sector is nimble and, in a sense, more resourced than the public sector. "This places it strategically in terms of the ability to produce outcomes which have a positive impact on the economy. The public sector provided me with a vantage point to see and understand the full value chain in the productive sector of the economy. I hope to use this experience to offer more practical and strategic advice to clients which should help them realise their business targets, with the resultant economic benefits."

Christo Els, Senior Partner at Webber Wentzel, is thrilled to have Nzimande back in the fold. "Welcome back Meluleki! It is good to have you home," he commented.

The CTI Practice is a perfect fit for Nzimande who specialises in all aspects of international trade and investment law across a range of sectors. His practice entails investigations into customs duty amendments including anti-dumping, safeguard and other trade remedies, and work involving bilateral and multilateral trade agreements, such as the African Continental Free Trade Agreement (AfCFTA), the Southern African Customs Union (SACU) Agreement, the EU-SADC Economic Partnership Agreement, and the WTO Agreement. Nzimande also has expertise in matters relating to mergers and acquisitions, anti-corruption law and general corporate law.

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# Exciting times for creating economic value



There's a chronic need for FDI in Africa, say leading M&A and trade experts Ziyanda Ntshona and Meluleki Nzimande. They discussed the foreign investment landscape in Africa with Craig Sisterson.

A population of 1.4 billion – mainly young people, infrastructure opportunities, and governments with positive dispositions towards foreign investment are among key ingredients that offer a compelling future for businesses keen to make a difference in Africa, say Ziyanda Ntshona and Meluleki Nzimande of Webber Wentzel's integrated Competition, Trade and Investment (CTI) Practice.

"There is a major, major need for foreign direct investment (FDI) in South Africa and the rest of the continent," commented Nzimande, who returned to Webber Wentzel in August as a partner in the new CTI group after serving as the Chief Commissioner of South Africa's International Trade Administration Commission.

Nzimande and Ntshona note there's now a broad understanding that FDI is required to help boost economic growth and combat high unemployment, and Cyril Ramaphosa, South Africa's president, has set a target of R1.2-trillion FDI over five years. "Last year we were sitting at just R1-trillion rand of FDI, so the target will be met, but it's nowhere near enough," said Nzimande. "But it tells you how conscious the executive is of the importance of attracting foreign direct investment to South Africa."

Ntshona, a leading corporate/M&A expert with extensive cross-border expertise has been recognised for her work across various legal platforms. She recently met with delegates from the US embassy to discuss key areas for trade and investment on the continent.

"They had infrastructure, health, digital and auto, as well as fintech – Africa's [exporting] a lot of fintech,"

she explained. "At Webber Wentzel we've had quite a few transactions which feed into the R1.3-trillion that the president is targeting, across a number of sectors and so we see M&A as a tool to propel growth and investment."

Nzimande was recently part of a panel discussion on the African Continental Free Trade Agreement (AfCFTA), and interacted with some CEOs of multinational companies. His impression is that AfCFTA is contributing favourably to the positive investor sentiment towards Africa. "AfCFTA's stated objective is, among other things, the rapid industrialisation of Africa," he explained. "Generally there's a positive disposition, not only from our government but also from the continent itself, towards the importance of FDI and attracting FDI."

There are, however, constraints to be overcome, such as the state of South Africa's ports and rail network and the regulatory regimes across the continent. Another part of the conversation, noted Nzimande and Ntshona, is that many African states are rich in mineral wealth – including materials needed for electric car batteries or in support of solar energy. While African nations traditionally exported raw minerals, now there's a greater push to convert their resources into higher-value goods at home – finished products that can create jobs all along the value chain. They believe the continent needs to support this with a more certain or predictable regulatory environment.

The CTI Practice group is an exciting development at Webber Wentzel, says Nzimande.

"It's basically harnessing the strength of our competition department – which works quite closely with Ntshona's M&A department – and the trade department, which is where I specialise, along with the investment component," Nzimande explained.

“From an investment point of view, what Webber Wentzel offers is a footprint that expands across the whole continent.”

The alliances Webber Wentzel has across Africa and beyond further bolster the impact and reach of their new CTI group, says Ntshona, and will help clients navigate regulatory hurdles.

“We’ve taken a different model to most law firms which say they’re ‘across Africa,’” noted Ntshona, pointing to the “best friends” alliances Webber Wentzel has which allow them to “engender and build deep, trusted relationships with the best on offer in

our industry in each jurisdiction”, rather than establishing their own offices in a few select African countries.

Webber Wentzel also has a long-term collaborative alliance with global giant Linklaters. This allows foreign investors to have a single point of contact, such as Ntshona, who will ensure they get accurate, quality and trustworthy advice packaged in a language they understand.

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# Africa's spider's web of trade



In this podcast, Webber Wentzel's Daryl Dingley and Judge David Unterhalter share their insights on the current trading and global influences in Africa with Africa Legal's Tom Pearson.

The multiplicity of trade agreements and policies in Africa can best be described as a spider's web, says Daryl Dingley, who heads the Competition, Trade and Investment (CTI) practice at Webber Wentzel.

Dingley noted that one of the shortcomings of having numerous regional and institutional bodies, is the inability of African countries to identify the parties in their trade policies. Webber Wentzel can advise governments on these and how to deal with the overlapping nature of the various agreements, he said.

Other areas in which they can offer their expertise are in inter-regional trade, customs, regimes, procedures, insufficient infrastructure and the free movement of people .

"To achieve the goals of the African Continental Free Trade Agreement (AfCFTA), for example, and to achieve a liberal trade regime, it's very important that we address some of those issues," said Dingley.

Judge Unterhalter, a South African High Court judge, has served on a number of World Trade Organization (WTO) dispute settlement panels. He pointed out that African countries marginally benefitted from historic trade relationships with their erstwhile colonial counterparts.

Unterhalter believes that if the aims of the AfCFTA are recognised, developed and realised, it will bring great advantages to the continent. He cautioned, however, that this must be coupled with significant institutional investment, as well as political will from all member states.

In the podcast, Unterhalter delves into what he sees as the future-focused role of the WTO and the economic war between China and the US which, he says, is a key variable not just in trade, but in all areas of global life.

The guests discuss the impact of the power rivalry between the two countries, their foreign policies and trade in other nations. Unterhalter comments that in some ways it's at the risk of having to make choices, particularly between the US and China.

"Africa wants good relationships with both, and being forced to choose is not helpful. I think there are many opportunities, though, to foster relationships with both in a way that is ultimately in Africa's interests."

Dingley says there is definitely a scramble for investment in Africa, with the Chinese ahead with regard to infrastructure development and spend, while the Americans are throwing their support behind renewables and agriculture.

Dingley and Unterhalter also talk about the ways major economic and politically similar African countries could form alliances to take advantage of the benefits of the continent.

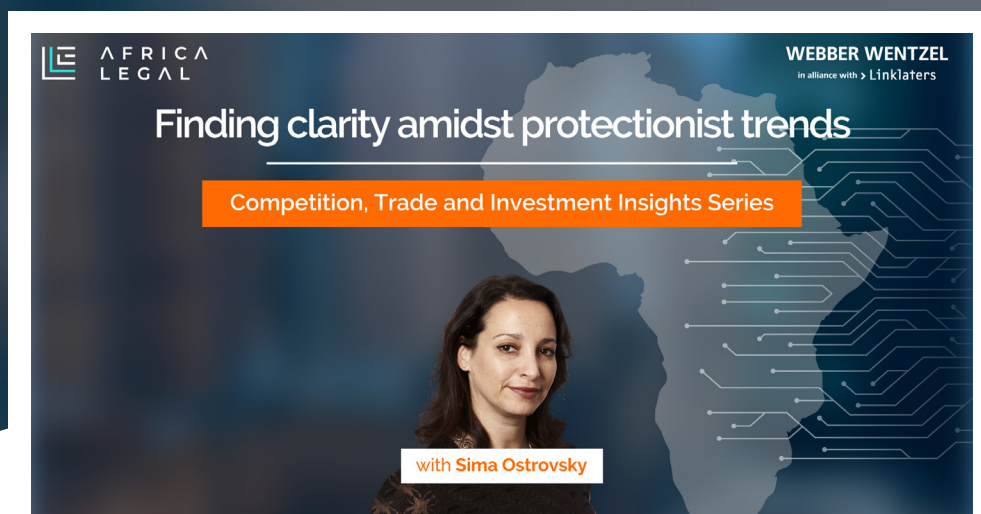
The conversation wraps up with the guests looking at how AfCFTA would enable streamlining and the adoption of competition rules across the continent, which has previously seemed arduous and complex.

Listen to the full podcast on [Soundcloud](#) or [Spotify](#).

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# Finding clarity amidst protectionist trends



Foreign investors often have their hands full keeping up with changing regulations in various regimes. Antitrust and foreign investment law expert Sima Ostrovsky spoke to Craig Sisterson about foreign investment trends in a fast-changing world.

While the arc of the global marketplace has bent towards openness and freer trade in recent decades, these days investors looking to enter foreign markets often need to navigate an opaque array of new investment regimes as well as authorities with broad powers, which can massively impact potential deals, says Sima Ostrovsky, an antitrust and foreign investment counsel at Linklaters.

“Countries are increasingly showing protectionist trends, with particular focus on critical infrastructure,” commented Ostrovsky, noting that burgeoning ideas of “free trade, peace, love, and camaraderie” have been impacted by geopolitical events since 2016.

Now based in London, Ostrovsky has practised competition law in the UK, South Africa and the United States, and advises on complex M&A deals, foreign investment, and various competition law issues in many sectors across the globe. For African matters, her Linklaters team often works closely with colleagues at leading African law firm Webber Wentzel, as part of a long-term collaborative alliance between the two firms.

Along with national security, Ostrovsky says technology, health, food security and critical infrastructure (including energy) are increasingly becoming key areas of focus for governments when it comes to how they regulate foreign investment, whether by way of standalone foreign investment regimes or specific sectoral regulation.

“On the remedy side, we’re seeing a bit of consistency in terms of the kind of powers that a lot of authorities gain as part of these various legislative instruments,”

Ostrovsky pointed out. “Most authorities have the power to prohibit a particular transaction and impose structural and behavioural types of remedies. A lot of these regimes are suspensory as well, so the parties cannot close a transaction until they receive clearance.”

Ostrovsky highlighted global examples of governments and regulators using new powers to control foreign investment in key sectors. In July and August, powers under the new UK national security and investment legislation were used to prohibit a dual-use technology licensing agreement between a British university and a Chinese technology company, then the acquisition of a UK technology company by a Hong Kong-based investor. Failing to obtain foreign investment clearance prior to closing can result in sanctions, for example a fine of the full value of the transaction in Spain, or up to five years’ imprisonment in Germany.

Significant reforms were made to South Africa’s regime under the Competition Amendment Act signed into law in 2019, including changes to merger control rules, the public interest assessment, and the introduction of a national security clearance requirement for certain deals involving foreign investors (although this provision is not yet in force).

Ostrovsky noted that foreign businesses looking to invest in Africa need to be keenly aware of changing rules and regulations, and their potential impact on deal timetables and costings. Globally, notification thresholds were lowered in some countries during the pandemic, and new sectors added to regimes.

“You’re constantly scanning for new rule changes,” says Ostrovsky. “It is also very hard to predict the type of remedies that would be imposed, as the authorities are not always transparent, which can impact deal certainty.”

<https://www.africa-legal.com/news-detail/finding-clarity-amidst-protectionist-trends/>

# The ever-changing CTI landscape



In this vidcast, Webber Wentzel's team of competition, trade and investment (CTI) experts share some valuable knowledge and insights.

The vidcast – hosted by Yael Shafrir, a trade and investment lawyer at Webber Wentzel specialising in Africa FDI and the AfCFTA, in collaboration with Africa Legal – focuses on foreign direct investment trends, public interest considerations for merger filings, key policy developments and investment promotion across the African continent.

Key for any investor looking at investing in a foreign country is a broad understanding of the legal and regulatory landscape. Sarah McKenzie, a specialist in international and domestic commercial and treaty arbitration as well as regulatory, international trade and commercial litigation, unpacks the investor due diligence that needs to be considered.

Factors such as understanding the law in relation to the investment protection available if something goes wrong, as well as understanding applicable bilateral and multilateral treaties are some of the topics that McKenzie addresses.

Burton Phillips, an expert in all aspects of competition law, discusses the type of public interest considerations being imposed in merger filings. He says there have been a significant number of developments recently, pointing to the Act, which necessitates investors considering both competition and public interest factors relevant to mergers and acquisitions.

Phillips cites the Burger King merger as one where public interest factors resulted in an initial prohibition of the transaction. He mentions that public interest factors are now considered on par with competition factors, resulting in competition practitioners becoming public interest lawyers.

A notable trend in merger approvals, says Phillips, is the employment factor, which continues to evolve, and ownership by historically disadvantaged persons and workers, both of which should be looked into at the due diligence stage.

Matthew Pool, a senior associate in the firm's CTI team and highly experienced in general trade advisory, shares his insights of the policy areas that the Department of Trade, Industry and Competition (DTIC) is looking into.

He says from an industrial policy perspective, employment and investment are the top two. The International Trade Administration Commission and the DTIC want to know that applicants are committed to investment in the South African and Southern African Customs Union economies.

Pool says in the case of a tariff increase, commitments regarding job creation or retention in specified categories such as youth employment, investments in capital expenditure, investment in skills development, and training and support participation in manufacturing by small businesses, must be considered.

Shafrir chats to the panellists about the current status of the investment protocol under the African Free Trade Continental Area (AfCFTA) as well the key sectors that are prioritised by the Secretariat. Among them are automotive and affordable mobility, agribusiness and agro processing, pharmaceuticals, healthcare, transport and logistics.

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